

United States
Circuit Court of Appeals
For the Ninth Circuit. ²

STERLING CARR, as Trustee in Bankruptcy
of NIPPON YUSEN KABUSHIKI KAI-
SYA, a Corporation, Bankrupt, and FIDEL-
ITY AND DEPOSIT COMPANY OF MARY-
LAND, a Corporation,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION,
LTD., a Corporation, and J. M. ANDERSEN,
Appellees.

(And Fourteen Consolidated Appeals.)

Apostles on Appeal

In Three Volumes

VOLUME III

Pages 961 to 1432

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Upon Appeals from the District Court of the United States
for the Southern District of California,
Central Division

United States Circuit Court of Appeals
For the Ninth Circuit

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for the Southern District of California,
Central Division

SAKITO EXHIBIT G.

DEPOSITIONS OF SPENCER F. HEWINS
AND DAVID H. BARTLETT.

Depositions of Spencer F. Hewins and David H. Bartlett, on behalf of Respondent-Claimant-Petitioner and Cross-Libellant Nippon Yusen Kabushiki Kaisya, in the above entitled actions, now pending in said court, before C. W. McClain, a Notary Public in and for the County of Los Angeles, State of California, at Room No. 8 Customs House Building, San Pedro, California, on Monday, August 11, 1941, commencing at the hour of 2:00 o'clock p. m. [675]

Mr. Adams: In connection with these depositions, for the purpose of the record, and at the suggestion of counsel, may it be stipulated, gentlemen, that all objections as to materiality, relevancy and competency are reserved until the time of trial, and that objections as to the form of questions are waived unless noted at the time?

Mr. Bullard: So stipulated.

Mr. Collins: So stipulated.

Mr. Briney: So stipulated.

Mr. Eastham: I so stipulate.

Mr. Clough: So stipulated.

Mr. Allen: So stipulated.

Mr. Montgomery: So stipulated.

Mr. Lippert: So stipulated.

Mr. Adams: Mr. Notary, I have already handed you notices of the depositions, which I will ask you to either attach to the depositions, as is your custom, or file separately with the clerk. Will you now swear Lieutenant Hewins? [677]

SPENCER F. HEWINS,

called as a witness in behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Lieutenant Hewins, will you kindly state your full name?

A. Spencer Foster Hewins.

Q. You reside, do you not, in San Pedro?

A. Yes, sir.

Q. You are connected with the United States Coast Guard Service, are you not?

A. Yes, sir.

Q. What is your rank, Lieutenant Hewins?

A. Lieutenant.

Q. Did you hold that rank on September 4, 1940?

A. I did.

Q. How long have you held that rank?

A. Since 1936, May 15th.

Q. Further, by way of a few preliminary questions, will you tell us how long you have been in the Coast Guard Service?

A. I entered the Coast Guard Academy at New London, Connecticut, in the month of September, 1937.

Q. Had you had experience at sea perior to your going into the Academy? [678]

A. I was brought up on the water by my father, but no previous merchant marine service.

(Deposition of Spencer F. Hewins.)

Q. After your graduation from the Academy did you serve aboard Coast Guard vessels?

A. Yes, sir. I had a total of nine years service afloat. It would be closer to ten years service afloat.

Q. Your graduation from the Academy was in 1927?

Q. I entered the Academy in 1927 and graduated in 1930.

Q. I believe I understood you to say 1937.

A. 1927. I did say '37.

Q. But 1927 is correct? A. 1927.

Q. You are presently stationed aboard the Coast Guard Cutter "Hermes", are you not?

A. Yes, sir. I am in command of that vessel.

Q. How long have you been in command of that vessel? A. Since the 2nd of February, 1940.

Q. You were in command of that vessel, were you not, on September 4, 1940? A. Yes, sir.

Q. On the morning of that day were you aboard the "Hermes"? A. Yes, sir.

Q. Where was the "Hermes" stationed at 7:00 o'clock a. m. on September 4, 1940?

A. We were on patrol duty and were moored to the Coast [679] Guard mooring buoy west of San Pedro breakwater light, inside the breakwater.

Q. Did you that morning receive word concerning a collision between the "Sakito Maru" and the barge "Olympic II"? A. We did.

Q. About what time, if you recall, did you receive that message? A. Very close to 7:20.

(Deposition of Spencer F. Hewins.)

Q. Were you directed by that message to go to the scene of the collision?

A. No, sir. I proceeded on my own responsibility.

Q. Did you immediately proceed after receipt of the message? A. Yes, sir.

Q. Will you describe to us, Lieutenant Hewins, the condition of the weather as you proceeded to the scene of the collision?

A. When we got away, at approximately 7:30, the fog was very thick, and I ordered all hands to clear the forward compartments of the vessel as a safety precaution in the event of collision, and proceeded at full speed to the scene of the accident. As we approached, this distance being about three miles, the fog was rapidly lifting and becoming thinner as we proceeded seaward. This was due partially to the fact that the fog was lifting and thinning [680] generally, and also due to the fact that the character of the fog was changing with the rising of the sun, which penetrated the fog at a less angle and improved the visibility. In the early morning, with the sunlight striking the fog at an acute angle, it sometimes appears to be thicker than it would were the sun overhead. In any event, when we arrived at the scene of the collision the visibility was approximately one mile.

Q. About what time was that, Lieutenant Hewins? A. 10 minutes after 8:00.

Q. What course did you steer as you left the

(Deposition of Spencer F. Hewins.)

entrance way to the harbor and proceeded toward the scene of the collision? A. 160° true.

Q. Will you describe what you observed when you arrived at the scene of the collision?

A. I was somewhat hampered in arriving at the scene by the earlier clearance from the harbor of a merchant vessel whose whistle I could hear ahead. As I overtook this vessel and it became apparent through the fog, he was observed to make a sharp turn to the right. I maneuvered around his stern to port, and when becoming clear of this vessel I could see numerous small craft and scattered wreckage on the surface of the water. We reduced speed as we approached, and observed one lifeboat from the Japanese ship "Sakito Maru", and approximately eight assorted small [681] craft, and the fishing barge "Point Loma", and the fishing barge "Samar", the latter two vessels anchored in their usual position. The "Hermes" cruised the area in search of survivors and were unable to locate any survivors or any bodies. I sent Lieutenant D. H. Bartlett, my executive officer, to board the "Sakito Maru" and to examine its log and inquire as to the collision of the Master.

Q. While Lieutenant Bartlett was aboard the "Sakito Maru", where was the "Hermes"?

A. I continued to cruise the area in the hope of picking up the survivors, and there was a boat from the "Olympic" floating around in the mass of wreckage, and several other small groups of wreck-

(Deposition of Spencer F. Hewins.)

age in which it would be easy to overlook a body or a possible survivor, and I was carefully searching the entire surface of the water for that purpose.

Q. Do I understand that you observed floating among the wreckage a lifeboat from the "Olympic II"?

The Witness: Now, this is not on the record.

(Short discussion off the record.)

Q. By Mr. Adams: Lieutenant Hewins, in view of the off-the-record discussion which we just had, I think it would perhaps be well for you to state on the record certain directions that have been given to you by your commanding officer with respect to the scope of our examination here today. Would you kindly state what they are? [682]

A. I have been directed by the Commander of the Los Angeles Division of the United States Coast Guard to answer such questions as may be directed to me with respect to the location of the vessels in this collision and the state of the weather on the day in question, and I will be forced to limit my answers to these qualifications.

Q. Now, Lieutenant Hewins, did you, after you arrived at the scene of the collision, tie up your vessel or anchor at any time?

A. No, I never made fast at that time, but I was directed later to maintain a position in the scene of the wreck, which had become a menace to naviga-

(Deposition of Spencer F. Hewins.)

tion, and to warn approaching vessels of its presence.

Q. Did the "Hermes" remain, then, in the scene of the wreck for that purpose? A. Yes.

Q. Were you tied up to a portion of the wreck or an anchor that was used by the "Olympic" for mooring?

A. At first I anchored in the vicinity, and later moored to the anchor or ground tackle which had previously been used as the stern anchor for the "Olympic".

Q. While you were anchored, or while you were tied up to that mooring, was the condition of the weather such with respect to visibility that you thought it necessary to sound any fog signals?

A. I do not think this limitation applies to the weather on [683] that particular day.

Q. On that particular day, while you were cruising in that vicinity, was the condition of the weather such with respect to visibility that you were required to sound signals?

A. I continued to sound fog signals for an appreciable period after arriving at the scene. I don't recall, due to the many events which were occurring, just when I stopped the whistle, but it was after we arrived.

Q. Do you recall what the visibility was at the time you stopped sounding your signals?

A. Well, if I followed my usual procedure, it would be about a mile and a half to two miles. It was that distance, a mile and a half to two miles.

(Deposition of Spencer F. Hewins.)

Q. If visibility were less than that, you would have continued to sound the fog signals?

A. Yes.

Q. What signals did you sound?

A. One blast every minute.

Q. Was that also true while you were anchored and tied up, or did you sound signals after you anchored?

A. I didn't sound signals after I had anchored.

Q. Lieutenant Hewins, were you familiar with the location of the "Olympic II" prior to the time you made this trip out there to the scene of the collision?

A. Yes, sir. [684]

Q. You had observed her anchored in that position prior, had you?

A. Yes, sir.

Q. Had you also observed the other two barges you have mentioned, the "Point Loma" and the "Samar"?

A. Yes, sir.

Q. Do you know whether the "Samar" was also called the "Rainbow"?

A. If I remember correctly, she had "Rainbow Pier" painted on her side.

Q. She has been referred to from time to time in these proceedings as the "Rainbow" barge, as well as the "Samar".

A. I believe that is the same barge that had "Rainbow Pier" in four foot letters on the side.

Q. You were familiar with the location of those other two barges?

A. Yes, sir.

Q. Did you at any time fix the position of the wreck?

A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Q. When did you do that, and by what means?

A. I first fixed the position of the wreck on the morning of the collision, for the purpose of issuing a radio warning to all vessels that she had been sunk and constituted a menace to navigation. At that time I fixed her position by compass bearing on Seal Beach Stack, San Pedro breakwater light, Point Firmin light, from the "Hermes", in close [685] proximity to the wreck. On the morning of the A Board hearing in this building, I further fixed the position of the wreck by sextant angles from the barge over the wreck from which the diver was operating. In this manner I made an exact fix by sextant angles on six charted objects.

Q. You spoke of the day of the A Board hearing. Will you give that date? I think it appears on that copy you have there.

A. Friday, September 6th, 1940. Did it run for more than one day?

Q. It did run for more than one day, but I think that was the first day of the hearing, and I think that is the day you testified.

Mr. Collins: I think the testimony shows that he testified on the afternoon of the first day.

A. It was in the afternoon some day.

Q. By Mr. Adams: In other words, it was the morning of that day that you took the position by sextant?

A. Yes. That was the position of the wreck as she lay on the bottom.

(Deposition of Spencer F. Hewins.)

Q. What was the bearing of that position with reference to the breakwater light?

A. From the breakwater light to the wreck, $159\frac{1}{2}^{\circ}$ true. The distance was 3.3 miles.

Q. Could you, Lieutenant Hewins, fix that position on this chart which I have here? I have some parallel rules [686] or a divider. A. Yes.

Q. Will you kindly do so? A. Yes, sir.

Mr. Adams: Let me state for the purpose of the record that this is Geodetic Chart No. 5101.

A. On this chart it will be more or less approximate, and if there is any difference in the position indicated on this chart and on the chart in the possession of the A Board, the position indicated on the chart before the A Board would be the most accurate.

Q. They had a larger chart there?

A. Yes. That was chart 5143, Coast and Geodetic Chart 5143.

Mr. Eastham: And what is this number?

A. This is 5101.

Mr. Adams: Now we can go off the record until Lieutenant Hewins fixes that position, and then he can spread out the map there.

(Off the record.)

Q. By Mr. Adams: Now, Lieutenant Hewins, you have fixed the position on this chart, have you, of the wreck? A. Yes.

Q. And you have indicated that by a dot with a circle around the dot, and a notation off to one side,

(Deposition of Spencer F. Hewins.)

“Location wreck of Olympic II,” with your initials in another circle; [687] is that correct?

A. That is right.

Mr. Montgomery: This is the old chart?

Mr. Adams: That is 5101. It is a new chart, but it is a chart that they were using aboard the ship “Sakito Maru”.

Mr. Montgomery: There is a later chart, isn't there?

The Witness: Well, now, wait a minute. There is another chart of this area, which is an experimental chart. You are referring to one tinted blue. They have contour lines on it.

Mr. Adams: Now, Lieutenant Hewins, if you will resume the chair there, I have a few more questions.

Q. By Mr. Adams: From your observations at the scene of the collision, do you know whether or not the position which you have described and indicated for the wreck was substantially the same position as the “Olympic II” was anchored in prior to the collision?

A. Yes. She was within 150 feet of her former position. She was slightly inshore from the previous position.

Q. That is, the wreck was slightly inshore of her previous position? A. Yes, sir.

Q. Had you had occasion to observe the position of the “Olympic II” prior to the collision?

A. Yes, sir.

Q. With reference to the course normally taken

(Deposition of Spencer F. Hewins.)

by vessels entering Los Angeles harbor from the south and [688] leaving Los Angeles harbor south-bound?

Mr. Bullard: I wish to object to the question, on the ground that it calls for the conclusion of the witness, and no foundation has been laid.

Mr. Adams: My question asked if he had had occasion to observe the course of vessels. Will you answer the question, Lieutenant Hewins?

A. Yes, I have had occasion to observe the course of vessels entering and leaving Los Angeles harbor.

Q. Can you state what those occasions were? In other words, how did you come to be familiar with the courses taken by vessels entering and leaving the harbor bound for those destinations?

Mr. Bullard: Bound for what destinations?

Q. By Mr. Adams: Well, vessels coming from the south for Los Angeles harbor and vessels leaving Los Angeles harbor and southbound for various destinations?

The Witness: Don't take this down.

(Off the record.)

A. In the general performance of my duties in this area, or any area, I must take cognizance of any and all vessels sighted, their apparent occupation, course and speed, and the name of home port.

Q. By Mr. Adams: Will you tell us, Lieutenant Hewins, what the position of the "Olympic II" was prior to the collision, with reference to the courses

(Deposition of Spencer F. Hewins.)

of vessels [689] approaching Los Angeles harbor from the south and leaving Los Angeles harbor south-bound?

Mr. Bullard: I wish to interpose an objection to the question, on the ground that it is vague and indefinite and ambiguous, and that it calls for the conclusion of the witness, and no foundation has been laid.

Mr. Eastham: I want to join in that same objection.

Mr. Lippert: I also object on the ground that it is not definite as to time.

Mr. Adams: We will clear up one or two of these apparent objections.

Q. By Mr. Adams: Lieutenant Hewins, before putting that question to you, let me ask you over what period of time did you make these observations of vessels entering and leaving Los Angeles harbor?

A. From the 2nd of February, 1940, to date.

Q. Has that been both in the daytime and nighttime? A. Yes, sir.

Q. Now will you answer the question with reference to the position of the "Olympic II" prior to the collision and the relation of that position to the courses of vessels entering Los Angeles harbor from the south and leaving Los Angeles harbor south-bound?

Mr. Bullard: The same objection as before stated.

Mr. Montgomery: I wish to join in that objection.

Mr. Eastham: I join in it too. [690]

Mr. Clough: The same objection.

(Deposition of Spencer F. Hewins.)

A. The general course of outgoing vessels bound south for Panama and San Diego and Mexican and Central American ports varies from 160 to 162 from the breakwater entrance.

Mr. Lippert: Are those degrees?

A. Degrees, yes. Bound in, from the above mentioned ports, there is a larger variation, caused by unfamiliarity with the port, but in general, the majority of vessels approach Los Angeles harbor from the southward on 340 true, and they pass very close, within a matter of yards, of the anchored barges.

Mr. Lippert: Is that "anchored barge" or "barges"?

Mr. Adams: Barges.

Q. By Mr. Adams: Prior to the collision, Lieutenant Hewins, had you observed vessels entering Los Angeles harbor from the south passing the barges, including the "Olympic II"?

A. Yes, sir.

Q. Was there any one side particularly that they passed on, or did they pass on both sides?

A. They usually passed west. I don't remember any vessel passing to the eastward of the barges.

Q. When you say the westward, that would mean that they had the barges on their starboard hand?

A. Entering, yes.

Q. What about the vessels leaving Los Angeles harbor [691] southbound?

A. They also passed to the westward of the barges.

Q. That would mean that they had the barges on their port hand?

A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Q. Can you tell us further with reference to the position of the "Olympic II" and these other barges, and the relation of the position of the barges to the track normally taken by other vessels, from your experience in lying at the scene of the collision?

Mr. Bullard: May I have the question read, please?

(Question read by the reporter.)

Mr. Adams: Do you understand that?

A. I think so.

Mr. Bullard: I wish to object to the question, on the ground, in the first place, that it is a compound question, and I believe it is an unintelligible question, and further on the ground that it calls for the conclusion of the witness, and no foundation has been laid.

Mr. Adams: Do you understand the question, Lieutenant Hewins?

The Witness: I would like to have it read over again.

(Question re-read by the reporter.)

Mr. Adams: Let me reword that question.

Mr. Briney: I wish to object to that as not being intelligible. [692]

Mr. Adams: Since my grammar has been assailed, I will reword the question.

Q. By Mr. Adams: Lieutenant Hewins, as the "Hermes" lay at the scene of the wreck, did you have occasion to observe vessels passing in that vicinity?

A. Yes.

(Deposition of Spencer F. Hewins.)

Q. Will you describe to us what you observed in that connection, with reference to which side of you they passed or the course that they took?

A. I know what is asked, but some place I have got to draw a line. It is getting awful close to the place where I have got to draw a line. And there is another thing, too, that I understand that I am going to be cross-examined here, and the cross-examination, the testimony has to refer to the facts brought out in the direct questioning, and I am limited to place and weather.

Mr. Bullard: I was going to suggest to you, Lieutenant Hewins, that if you feel that you are being forced to expand the scope of this inquiry by the present questions, subsequent questions would be somewhat more difficult.

The Witness: That is what I had in mind.

Mr. Adams: You understand that I have no desire to take you outside the scope.

The Witness: Yes.

Mr. Adams: My question was intended to elicit testimony with reference to the location of the barges, with [693] reference to the courses taken by the vessels entering and leaving Los Angeles harbor, and I simply thought that your testimony might be supplemented by such observations as you had made while you lay at the scene of the wreck, in addition to the observations you made prior to the collision.

Mr. Eastham: I object as not binding on libellant Culp, as to what happened after the wreck.

(Deposition of Spencer F. Hewins.)

Mr. Adams: If you feel free to answer it, you may do so. If you don't, kindly so state.

A. I saw nothing while I was at anchor in the scene of the wreck to change my opinion as previously expressed.

Q. By Mr. Adams: I have asked you, Lieutenant Hewins, what you observed to be the courses of other vessels. Are you free to state what course you steered when you left Los Angeles harbor southbound?

A. I always steer 160 true until such time as that bearing intersects with the red track laid down on the chart.

Q. That red track laid down on the chart is the course of vessels coming up the coast or going down the coast between Los Angeles harbor and San Diego, is it not?

A. Yes. It is also the course taken by vessels running coastwise on the Pacific Coast, regardless of where they are coming from or bound to, if they are coasting, running up or down the coast.

Q. It does not represent the course of 340° true that you mentioned awhile ago, does it? [694]

A. No, sir, and it doesn't go into Los Angeles harbor either. In other words, you have got to leave that line to get into Los Angeles harbor, and the customary way to leave it is on 340.

Q. You mean to leave the harbor is on 340?

A. No, sir. To leave this line entering the harbor.

Q. Again with reference only to the position of

(Deposition of Spencer F. Hewins.)

the "Olympic II" prior to the collision, can you tell us whether or not you ever boarded the "Olympic II" or stood nearby while you sent a party aboard? I mean, if there was such a case, can you tell us about it, so as to indicate what influence that might have had on your fixing the position of the "Olympic II" and your knowledge of its location?

A. I am afraid to answer that question would be departing from the instructions laid down by the Commander. Don't take this down.

(Statement off the record.)

Mr. Adams: I might state for the purpose of the record that if you feel that that is outside the scope of the authority granted I will withdraw the question.

Q. By Mr. Adams: When you arrived at the scene of the collision did you observe where the "Sakito Maru" was anchored with reference to the wreckage that you observed floating on the water?

A. Yes, sir.

Q. About how far distant was the "Sakito Maru" from [695] that wreckage?

A. Well, it is very difficult to judge distance under those circumstances, unless you are definitely setting out to do so, but I would say it was between 500 and 800 yards, and the direction was southeast generally.

Q. From the wreck?

A. From the wreck. I would like to change that and make it between 800 yards and 1,000 yards.

(Deposition of Spencer F. Hewins.)

Q. I believe you have already testified that you observed the lifeboat of the "Sakito Maru" at the time you arrived? A. Yes.

Q. Could you describe to us what you observed the lifeboat do before she returned to the "Sakito Maru"?

A. As I approached the scene of the wreck the lifeboat was returning from the wreckage to the "Sakito Maru", and was about midway between the two, in charge of an officer.

Q. Did she return at once, or did you continue to see her cruise in the waters there?

A. She stayed in the water all morning. Most of the time she was examining damage to her bow. She was well holed above the water line.

Q. As you arrived she appeared to be returning from the scene of the wreck to the "Sakito Maru"; is that correct?

Mr. Bullard: I object to that question as calling for [696] a conclusion of the witness, and also as leading and suggestive.

Mr. Adams: Well, I will withdraw the question.

Q. By Mr. Adams: Lieutenant Hewins, where was the lifeboat from the "Sakito Maru" at the time you first arrived?

A. It was in between the wreckage and the "Sakito Maru", headed for the "Sakito Maru".

Q. Did you see her return to the scene of the wreck at any time? A. No.

Q. Do you know what time she was pulled out of the water? A. I don't recall seeing it.

(Deposition of Spencer F. Hewins.)

Q. Did you observe two boats from the "Sakito Maru" in the water at any time?

A. I am not sure whether or not they had two in the water. When I approached I only recall seeing one. I believe later on they may have put down a second boat to examine damage in the bow, but I am not certain that there were at any time two boats in the water. I think there were.

Q. Could you indicate the position of the barges with reference to one another by drawing a diagram on a sheet of paper?

A. Yes, if there is a stipulation that it is being done from memory and that distances and bearings wouldn't be exact. It would be a very close approximation. [697]

Q. Will you do so, under those conditions?

Mr. Bullard: Wouldn't it be easier for the witness and better for the record as well to have the indication of the position of the additional barges made either on the chart already marked by the witness or a similar chart?

Mr. Adams: Mr. Bullard, that chart is drawn to such a small scale that I don't think the position of the other two barges could be shown.

The Witness: The thickness of that pencil on that chart is one mile, and the distance between the two furthest apart wasn't a mile. If it was done, it would be a matter of putting pencil dots down, or I could put it on an enlarged scale at the bottom of the chart, if you would prefer that.

(Deposition of Spencer F. Hewins.)

Mr. Bullard: I was merely making the suggestion.

Mr. Adams: I think if you continue that diagram, Lieutenant Hewins, it will serve the purpose.

Just to keep the record clear, I think I will introduce this chart that you previously marked before, which was the Geodetic chart No. 5101. I will offer that in evidence and ask that it be marked Lieutenant Hewins' Exhibit No. 1.

(Said chart so marked.)

(Deposition of Spencer F. Hewins.)

Mr. Montgomery: I wish to object to the introduction of chart 5101, on the ground, 1, that it is not the most recent chart, and, 2, that it is on such a large scale as not to indicate anything, and doesn't prove or disprove any issue in the case, and that there is a chart, to-wit, 5143, which [698] would present the testimony of the witness in a form to have probative value.

Mr. Adams: For the record, I have heard comments about this chart not being the latest chart, and if somebody will point out to me in what respect this chart is at all out of date in so far as the facts of this collision are concerned, or in what respect any later chart would have any greater probative value than this chart, then I will be glad to make any showing that is necessary on that score. If anyone has any objection to this chart, I will ask them to state them for the record at this time.

Mr. Montgomery: Our objection to this chart is that there is a later chart bearing the same number, 5101, which charts this wreck. That is as to my first objection only.

Mr. Adams: Now, Mr. Montgomery, your point is that we should use the chart which shows the wreck of the "Olympic II" on it?

Mr. Montgomery: That is the point.

Mr. Adams: Is there any other point that you have in mind with reference to a later chart, in so far as a later chart shows anything that this chart does not show?

Mr. Montgomery: Not with reference to the later chart, but with reference to a chart on a different

(Deposition of Spencer F. Hewins.)

scale, which would allow for more accurate placing of these various vessels and other points. I believe we should have that chart 5143, instead of 5101. [699]

Mr. Adams: I will state for the purpose of the record that this chart just offered in evidence is the type of chart that was used by the officers aboard the "Sakito Maru" in navigating up the coast and approaching Los Angeles harbor. And I will state secondly, that if anyone wishes to transpose the positions fixed on this chart by Lieutenant Hewins to chart 5143, it is a very simple matter to do so, and they are welcome to do so.

Q. By Mr. Adams: Now, Lieutenant Hewins, referring to the diagram which you have drawn, which I will ask that the reporter mark as Lieutenant Hewins' Exhibit No. 2 for identification, just describe on that diagram the position of the three barges, namely, the "Olympic II", the "Samar" and the "Point Loma"?

A. I have indicated their relative positions from one another, without attempting to draw either the barges or the distances to scale.

Q. You have indicated also a compass direction on the diagram, have you not? A. North, yes.

Q. And that is at the top, marked with an arrow, and below that an "N"? A. Yes.

Q. Then you have drawn three figures, representing the barges, with arrows, which I take it extend from the bows of each of the barges, so that they represent the heading [700] of the barges?

A. The approximate distance between the barges, yes.

(Deposition of Spencer F. Hewins.)

Q. You have also indicated by broken arrows between the "Olympic II" and the "Samar", and have marked in the broken area, "1/3 mile." Does that represents what you estimated the distance to be between the "Olympic II" and the "Samar"?

A. Yes, sir.

Q. When we are referring to the "Olympic" we are referring to her position prior to the collision; is that true? A. Yes.

Q. You have also indicated on the diagram a distance between the "Olympic" and the "Point Loma", that being one-eighth of a mile? A. Yes.

Q. Is that your estimate of the distance between those two barges?

A. Yes, that is an approximation.

Q. There is a line drawn from the stern of the "Olympic". Does that represent one anchor line, that is, the stern line?

A. That is the stern line they used under some circumstances to keep the vessel in the same position, and there is a buoy attached to an anchor or mooring of some type, and it is the same buoy to which the "Hermes" later moored, and to which I have referred in my previous testimony.

Q. As a vessel approached Los Angeles harbor from the south on a course of 340° true, which would be the first [701] barge that she would come nearest, or would that depend on whether she was passing the barges to the right or to the left of them? Let me withdraw that question and ask it in this way. Was the "Olympic II" anchored furthest away from Los

(Deposition of Spencer F. Hewins.)

Angeles harbor, the entrance way to Los Angeles harbor?

Mr. Briney: Than which of the other two?

Mr. Adams: Than either of the other two.

A. I would say the distance from Los Angeles harbor entrance to the "Olympic" would be identical with the distance to the "Samar".

Q. If a vessel from the south, approaching Los Angeles harbor, passed the group of barges on the westerly side, as you indicated they most normally would, what would be the nearest barge?

A. The "Olympic II."

Q. Would that be the first barge that that vessel would encounter or come in the vicinity of in passing on that side?

A. It would if their course took them through the position of the "Olympic", rather than through the position of the "Samar".

Q. In other words, the answer to that question of course, depends upon the exact position of the vessel approaching Los Angeles harbor?

A. Yes. You have got two ships anchored in a line, at [702] right angles, or nearly so, to the course of vessels entering the harbor.

Q. In other words, a vessel steering 340° true could be passing that group of barges on both sides or through the middle?

A. Both sides, through the middle, or a hundred miles either side.

Mr. Adams: I offer that diagram in evidence.

(Said diagram marked Lieutenant Hewins' Exhibit No. 2.)

Lieutenant Hewins Esq. Notary
8-11-41 C. W. H. Blair
Notary Public

CLYDE H. II

75 601011

1/3 mile

→ Square

5300

(Deposition of Spencer F. Hewins.)

Mr. Montgomery: I object to that upon the ground that it does not tend to prove or disprove any issue in the case, and that it is inaccurate, and that the points shown thereon would better be shown on chart No. 5143.

Mr. Adams: You may cross-examine.

Mr. Bullard: I have a few questions.

Cross-Examination

Q. By Mr. Bullard: At the time you made the six point fix of the position of the wreck you were stationed on the barge servicing the divers then working on the wreck; is that correct?

A. I was stationed on my own ship. That was the position that I was occupying, yes.

Q. And do you know whether or not that was directly over the divers who were working on the wreck?

A. I couldn't see the divers, but I could see the wreck [703] mast right under me.

Q. So, then, you were at least over some portion of the wreck at that time?

A. Yes, sir. I was over the foremast of the wreck.

Q. Could you determine the bearings of the axis of the wreck? A. Yes, sir.

Q. And how was it headed?

A. It was headed south of southwest, that is, between southwest and south; I should say south-southwest.

Q. When had you last observed the barge lying at her mooring prior to this collision?

(Deposition of Spencer F. Hewins.)

A. That is a date it is impossible to fix. I had seen her practically every day I had been on patrol for as long as she had been out there.

Q. Did you have occasion to observe the nature of her moorings?

A. Yes. She had a stern mooring out for the sole purpose, apparently, of keeping her bow into the sea, so she wouldn't roll.

Q. There is a prevailing westerly swell?

A. Yes, and the ground swell is westerly.

Q. So her heading would not change substantially from day to day? A. No, sir.

Q. And her heading was approximately what the last time [704] you saw her before the collision?

A. Approximately west.

Q. Did you at the time of making the six point fix make any notes of your observations?

A. Yes.

Q. Are those notes still available, Lieutenant Hewins?

A. I believe those notes are in the possession of the U. S. Engineers.

Q. Do you know whether or not those notes were used in preparing a subsequent Government chart showing the wreck?

A. I was requested by the Army Engineers at San Pedro to furnish them any information I had on the subject, and went to their office for the purpose of making a comparison with their own findings. My findings agreed exactly with one of two positions which they had, which position is now, or was taken

(Deposition of Spencer F. Hewins.)

as—they were taken as the definite position of the wreck.

Q. You have not in your possession now a copy of the results of your observations at that time?

A. Here?

Q. Yes. A. No, I haven't, here.

Q. And the bearing which you have given us of 159½ true from the San Pedro breakwater light, distance 3.3 miles, is based upon your recollection?

A. Yes. [705]

Q. Do you recall any of the other bearings or any of the other points?

A. A sextant angle or series of angles such as I took would not be related to true north. In other words, whereas a bearing has a relation to true north, or the top of the sheet, the angles which I took were from known points on the beach. I took Point Firmin lighthouse, Trona stack.

Q. That is the large stack at Seal Beach?

A. No. It is the gypsum plant.

Q. On South Pacific Avenue, in San Pedro?

A. And Point Firmin lighthouse, the breakwater lighthouse, and the hotel in Long Beach which is charted——

Mr. Adams: The Hilton Hotel?

A. I think it is the Hilton, but I wouldn't say for sure. It is some charted hotel in Long Beach. And the Seal Beach stack. Those angles—I can't remember anything—I made no effort to remember.

Q. By Mr. Bullard: Before coming here to tes-

(Deposition of Spencer F. Hewins.)

tify today did you refer back to any of your original notes in securing the bearing of $159\frac{1}{2}$ true?

A. Yes, sir. That was applied on the ship's chart, which is used in navigation of the vessel.

Q. On the chart of the "Hermes"?

A. Yes.

Q. And do you recall whether it was exactly $159\frac{1}{2}$? A. Yes, sir. [706]

Q. That is 159° and $30'$?

A. Yes. I remember that because it is one-half a degree east of the course which I habitually used in leaving Los Angeles when bound for San Diego.

Q. With reference to that course of 160° , which you have mentioned, from what point was that course taken?

A. A point midway between the east end of the San Pedro breakwater and the west end of the breakwater extension.

Q. After making that course going to the position of the "Olympic", what distance did you find separated you from the "Olympic"?

A. The distance would vary on different occasions, due to the strength of the sun, the strength of current, and strength of the wind. Generally speaking, it would pass within a matter of a thousand yards west of the wreck up to 200 yards east of it, perhaps more than 200 yards east of it. It also depends on the steering, the man at the wheel.

Q. I believe you testified that coasting vessels generally while southbound from San Pedro, what-

(Deposition of Spencer F. Hewins.)

ever may be their southerly destination, follow substantially that same course?

A. Yes, sir. Provided they leave San Pedro?

Q. Yes. It would make no difference whether they may be destined for San Diego or for the Panama Canal?

A. Yes. The vessels usually take a landfall at Point Loma or the Coronado Islands, and then set their course down [707] the coast from there. Vessels not stopping in Los Angeles would, on some occasions, pass the Channel Islands on their port hand, striking directly for some point on the Mexican Coast.

Q. And similarly do I understand your testimony correctly that all vessels northbound for Los Angeles from the south generally follow the course of 340° true?

A. I didn't testify to that. They leave the steamer track on 340 true to enter Los Angeles harbor. The course they would steer from San Diego would be 320 true, as indicated on chart 5101.

Q. Well, the course of 320 true, as indicated on chart 5101, is, then, the course customarily followed by vessels coming to Los Angeles from San Diego?

A. Yes, sir. And it is so recommended in the U. S. Coast Pilot for the Pacific Coast.

Q. You have mentioned the U. S. Coast Pilot for the Pacific Coast. Would you describe that publication, Lieutenant Hewins, in general what it is?

A. The Coast Pilot is the result of years of re-

(Deposition of Spencer F. Hewins.)

ports by master mariners to Washington, giving in general recommended courses, harbor facilities, characteristics of main headlands, lights, and sailing directions for entering ports. It gives currents for localities, both tidal and wind currents, which may be expected, and is in general a publication for the assistance of mariners operating along [708] the coast described by the particular volume referred to.

Q. And in general is it your opinion that the courses recommended by the Coast Pilot from point to point can be relied upon? A. Yes.

Q. In other words, it is more or less of a seaman's Bible, particularly for seamen who are not too familiar with local conditions? A. Yes.

Q. Do you happen to know what the recommended course is from San Diego to Los Angeles, as given in the Coast Pilot?

Mr. Adams: I object to that as incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue within the scope of this case. The course from San Diego harbor to Los Angeles harbor has no bearing upon this particular case.

The Witness: Now, what am I to do?

Mr. Adams: You may answer it. I just stated that for the purpose of the record.

A. If the Coast Pilot does recommend a particular course from San Diego to Los Angeles, I am not certain what that course may be. However, it is stated in the Pilot that coastwise charts of the

(Deposition of Spencer F. Hewins.)

Pacific Coast are marked with a red line, which indicates the course customarily taken by master mariners on this coast, and for that reason I [709] have been in the habit of following the recommendations as shown in those red lines.

Q. I believe in your testimony on direct you stated that vessels outgoing from Los Angeles southbound would follow a course that varied from 160 to 162° true; is that correct?

A. That has been my experience in observing vessels leaving Los Angeles harbor, yes.

Q. Would you say that all of the vessels which you have observed leaving Los Angeles harbor bound south followed that course?

A. No. A lumber schooner would practically never follow it.

Q. It isn't an inevitable course that a vessel must follow leaving Los Angeles and going south?

A. No, sir.

Q. There is no narrow fairway or dredged channel leading southward from Los Angeles harbor which must be followed? A. No, sir.

Q. And similarly vessels which are northbound from southern ports to Los Angeles have a wide choice of waters within which they can approach Los Angeles harbor? A. Yes, sir.

Q. I have in my notes here that you testified on direct that there was a larger variation in the course of north- [710] bound vessels, but in fact they followed the course of 340°. I understand that if such

(Deposition of Spencer F. Hewins.)

was your testimony you intended it to be 320°? It may be that my notes are wrong.

A. No, sir. I meant 340. Perhaps my testimony has not been complete enough to show what I had intended. On the chart there is a red line which is followed by most vessels.

Q. That is, from San Diego to Los Angeles?

A. Well, this chart continues on up to Puget Sound. I mean the red line continues up there, this line.

Q. Chart 5101 shows the red line only to San Diego, or in that vicinity?

A. To the south of it. To the westward it continues to the end of the chart.

Q. Then there are other charts which may be use in conjunction with 5101, which show the prolongation of the red line?

A. Yes, sir. Now, you gentlemen can see that the red line does not lead into Los Angeles harbor, and therefore if he wants to go into Los Angeles harbor a master must leave the red line, which he generally does on 340.

Q. And whereabouts is that departure usually made?

A. About the hundred fathom curve.

Q. The hundred fathom curve is shown on chart 5101, is it not?

A. Yes. [711]

Q. And it is your testimony that vessels north-bound customarily follow the red line, 320° track, until approaching the vicinity of the hundred fathom curve, and alter their course to 340°?

A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Mr. Adams: Could we have the witness indicate what he has reference to by the 100 fathom curve?

A. On this chart the soundings are shown in various spots all over the chart, but approaching shoals they have run a line between points of equal depth, similar to contour lines on a map, and they are referred to as the 100 fathom curve, the 50 fathom curve, the 20 fathom curve and the 10 fathom curve, each curve being indicated by different symbols on the chart, the 10 fathom curve by a dash and a dot, the 20 by a dash and two dots, and the 50 by a dash and five dots, and the 100 fathom curve by continuous dashes. I don't mean to imply that a mariner would change course on the 100 fathom curve, but it so happens that the 100 fathom curve at that point intersects the generally covered course of vessels with the bearing of 160 and 340 from Los Angeles harbor.

Q. By Mr. Bullard: And that would be a convenient place to make the change of course?

A. That would be one of the factors which could guide a master in approaching. Providing his ship was equipped with sounding devices, generally speaking he would make the [712] change on his direction finder in foggy weather.

Q. You have spoken of foggy weather. Is there a different procedure for approaching Los Angeles harbor from the south in foggy weather than in approaching in clear weather?

A. As far as my experience has shown in this particular case, no.

(Deposition of Spencer F. Hewins.)

Q. Lieutenant Hewins, may I read to you from page 28 of the U. S. Coast Pilot, Pacific Coast, 1934 edition, which is the fifth edition. Counsel may examine it.

Mr. Adams: I object.

A. If you are going to read to me from that, may I ask if it has been corrected?

Q. By Mr. Bullard: The volume which I have is the third volume, complete with supplement. The supplement, I may state for your information, shows no corrections for this page.

Mr. Adams: I would like to object to the procedure Mr. Bullard is following, upon the ground that such testimony is admissible only in an attempt to impeach the qualifications of the witness, to-wit, an expert witness, and I have made no attempt to qualify Lieutenant Hewins as an expert witness for the purpose of eliciting from him expert testimony. I would be delighted to do so, if Lieutenant Hewins felt that his authority would permit him to testify as an expert on the subjects that I would like to interrogate him on. But [713] inasmuch as his testimony has not gone into the realm of expert testimony, I object to this attempt to introduce so-called impeaching testimony, I suppose endeavoring to show that his memory concerning the Coast Pilot might not be exact or accurate.

Mr. Bullard: Mr. Adams, I might state that I am not attempting to impeach the Lieutenant's testimony. I am simply seeking to explain or interpret

(Deposition of Spencer F. Hewins.)

certain statements which appear in the Lieutenant's testimony on direct examination.

Mr. Adams: I don't see how you can refer to another outside document to explain his testimony. If there is anything in there that the court feels is material to this inquiry, that testimony can be introduced at the time of the trial. I object to it for the purpose stated.

Mr. Bullard: If the Lieutenant feels that this question is in any degree embarrassing by reason of instructions which he has received concerning the scope of his testimony in this proceeding, I will be happy to withdraw it, but before doing so I would like to state what I had in mind doing. I propose to show this page to the Lieutenant and ask him to read a certain portion of it in the record, and ask him if he believes that the recommendation as to course therein expressed is a sound recommendation to be followed when approaching Los Angeles in foggy weather. The lieutenant has already testified that, so far as he knows, there is [714] no difference in procedure in approaching Los Angeles, whether the weather be clear or whether it be foggy.

The Witness: Mr. Bullard, I am afraid that either you misunderstood what I said or I have put it very poorly, but I thought that I was referring to the general practice of vessels approaching. That is why I hesitated when I first started to answer that question. There are different ways of entering any harbor, and those different methods are used under different circumstances, and will be applied differ-

(Deposition of Spencer F. Hewins.)

ently by different masters. I didn't intend to imply that that is the only way the majority of masters come in here, because it would be foolish for me to say that I have watched the majority of them come in. The majority of those that I have seen come in, that I have observed, have come in in that manner. Now, of course, it is bound to be that in thick weather I could not observe as many vessels entering as I could in clear weather, unless I happened upon them while making an approach to the harbor.

Mr. Bullard: I believe your explanation tends to clarify your testimony considerably. I don't want to expand the scope of this beyond your instructions.

Mr. Adams: I might state, Lieutenant Hewins, that if you see no objection to answering questions as an expert, I would be quite glad to go into certain matters with you as an expert witness, and I have no objection to this question. [715]

A. I don't believe my orders could be stretched that far by any stretch of the imagination.

Q. By Mr. Bullard: As I understand it, Lieutenant, your testimony with reference to the approach of vessels from the south, whether the weather be clear or foggy, will depend somewhat upon the individual vessel involved and the experience of the master of that particular vessel?

A. Yes, sir, and also the number of times he has entered this particular port, and under what circumstances.

Q. With reference to the testimony as to different procedure whether the weather is clear or foggy,

(Deposition of Spencer F. Hewins.)

if an incoming master is not too familiar with Los Angeles harbor he couldn't go far wrong in following the recommendation of the Coast Pilot?

A. I would say that would be his recommended course.

Q. I believe you testified that you had observed the "Olympic" and the two other barges, the "Point Loma" and the "Rainbow" barge, since your first being stationed in San Pedro?

A. Since they have been out there. A couple of them went out and came back in, and went out again.

Q. And it came to your knowledge, either officially or otherwise, as to what they were doing out there?

A. Yes, sir.

Q. What is the name of the locality where the "Olympic" was stationed?

A. The Kelp Bed. [716]

Q. Is there a name for it?

A. It is usually called the Kelp Bed. There is no official name.

Q. Have you heard it referred to as "Horseshoe Kelp"?

A. Yes, and also as the "Horseshoe".

Q. You have been out there on numerous occasions and observed the position of the "Olympic" and the other two vessels?

A. Yes, sir.

Q. And that is a well known local fishing ground, is it not?

A. Yes, sir.

Q. And usually fishing vessels of one type or another can be seen out there?

Mr. Adams: I object to the previous question and move that the answer be stricken, upon the

(Deposition of Spencer F. Hewins.)

ground that it calls for a conclusion of the witness, and, further, I don't know whether Mr. Bullard intended by his question to ask the witness whether it was a well known local fishing ground, or a fishing ground well known locally, and I object to it as calling for a conclusion of the witness, in so far as it calls for testimony of this witness as to whether it was well known as a local fishing ground.

Mr. Bullard: Well, I will withdraw the question and reframe it.

Q. By Mr. Bullard: During the course of your experience [717] here in San Pedro it has become well known to you, has it not, that that is true?

A. Yes, sir.

Q. And times when you have observed that particular portion of the ocean you have seen fishing vessels of different sizes and descriptions out there?

A. Yes, sir.

Q. Some of them anchored and some of them drifting?

A. Yes, sir.

Q. And some of them cruising around looking for fish?

A. Yes, sir.

Q. Have you been in San Pedro at any other time than subsequent to February, 1940, or is that the——

A. Subsequent to that time.

Q. I beg your pardon. Prior to February, 1940, or is that your first experience?

A. No, sir. I was out here as a watch officer on the Coast Guard cutter "Algonquin" in 1930.

Q. How long were you here then?

A. Approximately four months.

(Deposition of Spencer F. Hewins.)

Q. Were you on shore duty or on sea duty?

A. Sea duty.

Q. And since February 2, 1940, have you been constantly operating out of San Pedro?

A. Yes.

Q. You haven't made any extended cruises, like up to [718] Alaska or the Hawaiian Islands?

A. Yes; I have gone as far as Seattle.

Q. How long were you away?

A. I am afraid I am going to have to decline to answer that.

Mr. Bullard: Very well.

The Witness: May I answer that question in this way?

Q. Yes, if you wish.

The Witness: If you will withdraw that question and ask me something along the same line, as to what was the greatest time I was away, or something like that, I could tie it in with previous questions.

Q. By Mr. Bullard: I will be happy to do so. What is the longest period of time you have been absent from San Pedro since February 2, 1940?

A. Approximately six weeks.

Q. And what is the total length of time that you have been absent from San Pedro since February 2, 1940?

A. Generally speaking, I have been operating at sea in the vicinity of San Pedro 55 per cent of that time. In other words, we have to come in for repairs and rest and relaxation of the crew.

(Deposition of Spencer F. Hewins.)

Q. With reference to the time prior to the date of the accident, which was September 4, 1940, would it be any violation of your instructions to ask you whether the "Hermes" was customarily stationed in and about the harbor [719] during that period of time?

A. That is correct; she was stationed in and about the harbor for that entire period.

Q. Now, could we also inquire as to what your duties were in general at that time?

A. The same duties, in general, as the Coast Guard, the preservation of life and property in general, and the enforcement of the collection of revenue.

Q. You were the commander of the "Hermes", and did you have any additional duties with reference to the administration of the Coast Guard?

A. Yes, sir. For a period of about three months I was also Commander of San Pedro Group, which consists of small harbor craft operating in Los Angeles harbor.

Q. Does your jurisdiction extend generally over the territorial waters of the United States in this area?

A. Yes, sir.

Mr. Bullard: I have no further questions.

Mr. Collins: I will ask one or two questions.

Mr. Bullard: I beg your pardon, Mr. Collins. I have one other thing that might possibly be of some convenience.

Q. By Mr. Bullard: There has been some question raised as to the authenticity or desirability of using one particular chart, on the ground that there

(Deposition of Spencer F. Hewins.)

is a later one. I would like to show the Lieutenant chart No. 5105, bearing the printed date, "July 19, 1941", and call his attention to the [720] fact that, at a place which, to the best of my ability of observation, is almost exactly the same place that he has marked on the chart already offered in evidence by Mr. Adams, there is a notation, "Wreck", with a circle, and the figure "8", and ask him if the position marked on this chart dated July 19, 1941, which I have just described, corresponds to the position which he has marked on the other chart. I will also state that, as nearly as I can see, it is exactly the same position.

A. It looks to be just slightly westward, but, as I say, this chart is pretty large. It quite apparently refers to the barge "Olympic".

Q. You have, by means of parallel rules and divider plotted the position of the wreck of the "Olympic" on the chart dated July 19th, and bearing the indication, "Wreck", in circles, and the figure "8" beside it, and your calculation on this chart indicates the wreck within the circle marked on the chart?

A. Yes, sir.

Q. And it is your opinion, is it not, then, that the position marked on the chart dated July 19, 1941, "Wreck", with the figure "8" in it, is the position of the wreck of the "Olympic"?

A. Yes. It is my opinion that it is there for that purpose.

Mr. Bullard: I have no desire to further encumber the [721] record by introducing this original

(Deposition of Spencer F. Hewins.)

chart in evidence, but I believe we have identified this chart sufficiently with the Lieutenant's testimony, so that if at any future time anyone desires to do so, they may spend 70 cents and buy one of these charts and introduce it in evidence, if they feel that it will be of any benefit. I have no further questions.

Cross-Examination

Q. By Mr. Collins: Lieutenant Hewins, as part of your ordinary duties in the Coast Guard Service, is it one of your duties to proceed to and mark wrecks of various vessels that may have sunk in navigable waters?

A. That is the duty of the Coast Guard.

Q. And is that because of the provisions of the so-called "Wreck Act", or are you familiar with the provisions of that act?

A. Well, it is not as a result of the provisions of that act, except as they may have been connected with the duties of the lighthouse service. The lighthouse service, prior to the time it was taken in as a part of the Coast Guard, was charged with the responsibility of maintaining aids to navigation. That now devolves upon the Coast Guard, and I can't state certainly whether the "Wreck Act" in particular is the basic legal requirement for the Coast Guard to perform such duties. [722]

Q. Was it as a result of your duties that you have just explained for us that you anchored near the wreck and marked it and kept warning off incoming and outgoing ships?

A. Yes, sir. One of the primary duties of the

(Deposition of Spencer F. Hewins.)

Coast Guard has always been the preservation of life and property at sea.

Q. Would you have performed the same sort of duties in connection with a wreck in any other navigable waters? If that is a question that embarrasses you and that you can't answer, I am perfectly willing to withdraw it.

A. I would say that that would be a matter of location of the navigable water in question. For example, a navigable water might be some small stream that is navigable by law, where the railroads might have to have drawbridges and things like that on it, but which might not in fact be navigated.

Q. In waters that are in fact navigated in and around Los Angeles harbor, you would have performed the same duties, if there had been a wreck in any of those waters, as you performed in connection with the wreck of the "Olympic"; is that correct?

A. I would say that would be quite probable.

Mr. Collins: I have no further questions.

Cross-Examination

Q. By Mr. Lippert: In the course of your duties, [723] have you had occasion to become familiar with the boundaries or limitations of San Pedro Bay?

A. Yes.

Q. Can you state whether or not the scene or the location of this wreck is in San Pedro Bay or outside of San Pedro Bay?

Mr. Adams: I have no doubt that the Lieutenant

(Deposition of Spencer F. Hewins.)

could probably give an opinion on that, but obviously that would be an attempt to express a legal opinion as to the confines of San Pedro Bay, and I object to the question as calling for a conclusion of the witness and encroaching upon the province of the court.

Mr. Bullard: I wish to join in Mr. Adams' objection.

Mr. Lippert: Can you answer the question?

A. San Pedro Bay was so named, in my opinion, to include a body of water which was defined by natural limitations.

Mr. Bullard: May I interrupt at this point to add this objection, that it is calling for the conclusion of the witness, and no foundation has been laid.

Mr. Adams: I will add the objection also that it goes outside the scope of the direct examination.

A. Subsequent to the original naming of the bay there have been certain man-made limitations, which may or may not limit in fact the waters of San Pedro Bay, but I am in no position to definitely state what the present limitations of that bay are. In fact, I don't know whether they have ever [724] been set.

Q. By Mr. Lippert: Did you ever know the limitations of the bay?

A. No, sir, no more than I would the limits of San Pedro channel or outer Santa Barbara passage.

Q. Can you state whether or not the scene of the collision occurred within the territorial waters of the State of California?

Mr. Adams: I object to that, obviously, on the ground that it calls for the conclusion of the witness,

(Deposition of Spencer F. Hewins.)

and no proper foundation is laid, and it encroaches on the province of the court, and is outside the scope of the direct examination.

A. I am not aware of any territorial waters of the State of California.

Q. By Mr. Lippert: If you were told that San Pedro Bay, as defined by law, extends from Point Lasuen to Point Firmin—I believe it is near Huntington Beach.

Mr. Adams: I don't believe it is shown on the chart, is it Lieutenant?

A. I don't believe it is.

Mr. Lippert: I will withdraw the question and revise it.

Q. By Mr. Lippert: Is there, to your knowledge, a point on the coast adjacent to San Pedro, or along the coast between San Pedro and San Diego, known as Point Lasuen?

A. If there is, I have never heard of it. [725]

Q. Is there a point or promontory near Huntington Beach which is commonly known as a point, or used for navigation purposes?

A. From the sea Huntington Beach is flat, without distinguishable characteristics.

Q. Referring to the chart now in evidence, Lieutenant, at the point on the coast marked "Huntington Beach", is there a line that indicates a wharf or pier?

A. Yes; there would appear to be two piers or wharves at Huntington Beach, here and here.

Q. And this one, would that be more northerly, the northernmost wharf? A. Yes.

(Deposition of Spencer F. Hewins.)

Q. Now, if you were to be told that San Pedro Bay extends from a line drawn, or, rather, an extension from Point Firmin to the northernmost wharf at Huntington Beach, could you state whether or not the location of this collision occurred within or without the confines of San Pedro Bay?

Mr. Adams: I object to the question on the ground that it calls for the conclusion of the witness, and no proper foundation is laid, and it is incompetent, irrelevant and immaterial whether this collision occurred within or outside of the San Pedro Bay.

Mr. Lippert: Will you answer?

A. South of the line indicated.

Q. Will you indicate which direction is south on there? [726]

A. The bottom of the chart.

Mr. Lippert: No further questions.

Cross-Examination

Q. By Mr. Eastham: Lieutenant Hewins, what was the condition of the weather, as to fog or otherwise, prior to receiving word of this collision, as you observed it?

A. The condition varied prior to receiving that word from dense fog to fog of lessening density.

Q. You received word of the collision about 7:20. Going back to three-quarters of an hour before that, what would you say it was?

A. I would say visibility at that time in the harbor was probably 200 yards.

Q. You also said that you continued to sound the

(Deposition of Spencer F. Hewins.)

“Hermes’ ” fog signals until the visibility was one and a half to two miles, until you reached the scene of the wreck. What time was that, do you remember?

A. I am not sure that I know which time you are referring to. At the time I arrived——

Q. After you arrived, the fog cleared up until the visibility was one and a half to two miles, and I am asking you what time that was.

A. I still don’t remember the——

Q. You testified that you were out there the remainder of the day? [727]

A. Yes, sir.

Q. Did you see any bodies?

A. I recovered a body later.

Q. Do you know whose body it was that you later recovered?

A. The master of the barge. Anderson, I believe his name was.

Mr. Adams: I don’t believe that was the name, Lieutenant. Is that the name you think it was of the party?

A. It was the master of the barge that we recovered.

Mr. Adams: He didn’t lose his life.

Lieutenant Bartlett: It was a man by the name of McGrath. He pronounced it “McGraw”, and it is spelled “M-c-G-r-a-t-h”.

Q. By Mr. Eastham: Did you ever recover the body of a young boy about 16 years old?

A. No.

Q. You said you sent your executive officer aboard the “Sakito Maru”?

A. Yes, sir.

(Deposition of Spencer F. Hewins.)

Q. Did he examine the "Sakito Maru's" log?

A. He examined the log, yes.

Q. About what time of day was that, if you remember, approximately?

A. About 10 minutes after we got there, about 8:20.

Q. The log wasn't written up then as to the collision, [728] was it? A. Yes.

Q. It was all written up?

A. As I received the report, it was. I didn't see the log.

Mr. Eastham: That is all.

Cross-Examination

Q. By Mr. Clough: Lieutenant, these barges had been stationed in this locality for some months, had they not?

A. They had been out there for some time, more than a month, but just how long I don't know.

Q. What device, if any, is there to notify incoming mariners and captains of boats as to the locality of these fishing vessels?

A. Do I understand that question to mean some device apart from the fishing vessels?

Q. Is there anything that would communicate to an incoming boat the fact that there are fishing vessels located in this kelp bed? Do you see what I mean?

A. You mean a device on the incoming vessel, or a device on the fishing vessel, or a device—

Q. Is there any information which is relayed or

(Deposition of Spencer F. Hewins.)

forwarded to an incoming captain which would warn him of the fishing vessels being anchored there?

A. I don't remember seeing any in writing. There is a [729] comment in the Pilot regarding the large number of fishing vessels to be encountered in the entrance of the Strait of Juan de Fuca.

Q. Do you remember whether there is anything pertaining to fishing vessels in San Pedro harbor?

A. I have never seen it.

Q. Have you any way of ascertaining what the visibility was at the point of impact about 7:20 in the morning, from where you were?

A. I couldn't see them.

Q. It would be different from where you were stationed?

A. It could be identical, and it could be the direct opposite.

Q. When you did reach the scene of the impact of these two vessels what was the visibility then?

A. I would say about a half a mile. You gentlemen understand that conditions were changing rapidly at that time. The sun had attained a certain altitude, and it was getting lighter every minute, the fog was getting lighter.

Q. At the time of the impact would it be possible for the barge to have been pushed forward or backward from its location prior to the time of the impact?

Mr. Adams: May I have that question read again, please?

(Deposition of Spencer F. Hewins.)

(Question read by the reporter.)

A. Yes, it was possible for the barge to be moved by the force of the collision. [730]

Q. By Mr. Clough: How far would it be possible for the boat to be moved?

A. I can't answer that question. It would depend on the tonnage of the vessel, and the angle at which she struck the vessel at rest, the speed at which she was going, and the tonnage, size, depth of the vessel that was struck. It is absolutely impossible to answer that.

Mr. Adams: Mr. Clough, for your information, Lieutenant Hewins already testified as to how far he thought the "Olympic" was moved.

Mr. Clough: Did he so testify to that?

Mr. Adams: Yes.

Mr. Clough: How far did he say?

Mr. Adams: You can ask him that question again, but he testified as to how far he thought it was moved.

Q. By Mr. Clough: How far do you think the vessel was moved?

A. Between 150 and 200 feet.

Q. What direction would that be?

A. I would like to modify that previous answer too.

Q. All right.

A. She was about 150 to 200 feet from her previous position, that is, her position prior to the collision, when I located her on the bottom. She was

(Deposition of Spencer F. Hewins.)

headed about, roughly speaking, 45° . That would be caused by the anchor holding the bow, while the stern was moving and she was [731] swinging on an angle of about 45° . She filled up and went down—I understand she went down very rapidly, so it could be assumed that she rested on the bottom under the place where she was when she moved sidewise at the time of the collision.

Mr. Clough: I think that is all.

Cross-Examination

Q. By Mr. Briney: Assuming a ship following that 320° course from San Diego, if the ship master had decided to come on that course until he could take a 340° course to the lighthouse, he would determine that he had reached that point when a bearing by compass showed that he had reached a point where such a bearing would bear on the lighthouse, and then he would turn? He wouldn't go by soundings, in other words?

Mr. Adams: I object to the question on the ground that it assumes facts not in evidence, if the question deals with the course of the "Sakito Maru", inasmuch as the testimony clearly is that the "Sakito Maru" came on a course of 340° true, and inasmuch as the witness testified that vessels coming up the coast from the Canal Zone do not come up the coast on a 320° course, as those vessels come from San Diego here, but come up and approach Los Angeles harbor on a course of 340° true. Therefore I object to it as assuming facts not in evidence. [732]

(Deposition of Spencer F. Hewins.)

Mr. Briney: I will withdraw the question. You may strike all my remarks.

Mr. Adams: Does anybody else have any further questions on cross examination?

Cross-Examination

Q. By Mr. Montgomery: Has the wreck, to your knowledge, moved since it originally hit the bottom?

A. It has been leveled more or less, and parts of it have certainly moved. She was mined by the Army Engineers, by contract with the Army Engineers, so it would be safe for vessels to go over the top of it.

Q. Is there any wreck there today?

A. Oh, yes. She is an iron ship, and should be there for many, many years.

Q. She hasn't changed her position appreciably?

A. No, and she won't. She is sanded in there now.

Q. You spoke of coming upon the "Sakito Maru's" lifeboat about midway between the wreckage which was drifting about the scene of the collision and the "Sakito Maru". As to that wreckage, can you tell whether or not it was generally over the point where the "Olympic II" was submerged?

A. I would say the wreckage was west of the submerged position of the "Olympic".

Q. Can you say how far west? [733]

A. Well, it is spread over considerable area, a thousand yards, roughly.

Mr. Montgomery: That is all.

Mr. Bullard: I have one other question.

(Deposition of Spencer F. Hewins.)

Further Cross-Examination

Q. By Mr. Bullard: Directing your attention to the time you were taking the six point fix from the diver's barge, where was the mooring buoy that had marked the position of the stern line of the "Olympic"?

A. I was hanging on it. The "Hermes" was moored to it. I would say the compass bearing from the barge to the ship was about 120° , a little south of east.

Q. The "Hermes" was tied to the mooring?

A. Yes.

Q. And the barge was separate and some distance from it? A. Yes, sir.

Q. About how much distance separated the two?

A. These distances are very difficult from memory. I would say 600 yards. You see, that buoy had to be some distance off the stern of the "Olympic".

Q. That was the next thing I was about to ask. Had you observed from your prior observations what distance separated that buoy we have been talking about and the stern of the "Olympic"?

A. Yes, there was a considerable distance. It was [734] remarkable in that it was more than you would expect that distance to be. I would say it was 200 yards from the stern. Now then, that is assuming that the stern line had a strain on it and was pulled in from its anchor toward the ship.

Q. The position of that buoy didn't enter into the fix that you made, did it?

(Deposition of Spencer F. Hewins.)

A. Oh, no. I had left the ship.

Q. Nor would the position of the buoy from that of the diver's barge necessarily show how much the "Olympic" had been moved by the force of the collision?

A. No. That would be one way of determining it, and another would be—I see what you mean.

Q. Let me state the question in a different way. Can you determine approximately the distance the "Olympic" was moved by the force of the collision by correlating the point of location of the diver's barge, which you have testified was directly over the submerged wreck, and the buoy of the stern anchor?

A. No, for this reason. I was making a guess of 150 feet, roughly, but in making a guess of that sort, the force applied to move that vessel would vary so much—say it had moved it 50 feet, then it might take three times that force to move it 100 feet and ten times that force to move it 150 feet, and therefore any guess I would make would be so radically vague with respect to determining the force that it wouldn't be useful. [735]

Q. Was the buoy marking the stern anchor in the same position after the wreck as before the wreck?

A. I have never fixed that point so accurately as to be able to answer the question, either before or after.

Q. With reference to the position of the buoy

(Deposition of Spencer F. Hewins.)

and the wreck, you cannot state what distance the vessel was moved by the force of the collision?

A. No, I couldn't make that statement based on any knowledge which I have.

Mr. Bullard: That is all.

Mr. Adams: Does anybody else have any further cross examination?

Redirect Examination

Q. By Mr. Adams: After the wreck was the line from the stern of the barge still connected with the buoy? A. No.

Q. The buoy was floating free, then, except for the line which ran to her weight at the bottom?

A. Yes.

Q. The condition of the current and the wind might have some effect, then, upon the position of that buoy if that line was severed, might it not?

A. Within limits. In other words, I don't think the anchor would be moved by the force of the current and the wind. [736-7]

Q. Within the limits of the scope of the change?

A. Yes, depending on the scope.

Q. Lieutenant Hewins, you have commented upon the distance of visibility from time to time while you were aboard the "Hermes". From what position aboard the "Hermes" did you form these estimates of visibility? Where were you, in other words? A. I was on the bridge.

Q. That was true, was it, during the time that you were approaching the scene of the collision from Los Angeles harbor?

(Deposition of Spencer F. Hewins.)

A. Yes, sir. I didn't leave the bridge until noon.

Q. So all of your estimates were made and your testimony has been given with reference to the estimates made when you were on the bridge of the "Hermes"? A. Yes, sir.

Q. When you first arrived in the vicinity of the wreck were you able to distinguish through the fog the other two barges? Were they visible?

A. They were visible when I arrived at the scene of the wreck.

Q. Did the fog, while you remained at the scene of the wreck during that morning, ever become so dense that those other two barges were not visible?

A. No.

Q. Even though you could see the other two barges from [738] the time you arrived at the wreck, you continued to sound fog signals up to some later time, the exact time of which you can't remember; is that correct?

A. Yes. I sounded two blasts instead of one, showing that the vessel was stopped.

Q. Did you continue to give that signal that morning?

A. Yes. It was only a short time before it became clear enough to dispense with the fog signals, but I can't tell you how long it was, things were happening too fast.

Q. Lieutenant Hewins, can you tell us, if you recollect, the average number of vessels entering and leaving Los Angeles harbor southbound or bound to the south during the 24 hour period that you

(Deposition of Spencer F. Hewins.)

observed around the time of September 4, 1940?

A. Southbound?

Q. Either southbound or entering Los Angeles harbor from the south.

A. It varies different days, but I would say it wouldn't exceed three a day.

Q. That would be entering Los Angeles harbor from the south or leaving Los Angeles harbor for the south?

A. Yes, sir. Some days it would be quite large, and other days you might not have any.

Q. I should have perhaps asked you this question at the start of the deposition, to show where you will be at the time of the trial, which is set for September 16, 1941. [739] Do you expect to be in the region of Southern California on that day?

A. No, sir.

Q. Are you free to state where you expect to be?

A. I am sorry——

Mr. Bullard: I think if he says outside of the district, that would be sufficient.

A. I will be outside of the reach of the courts of this vicinity at that time. My destination is confidential.

Q. Is it fair to ask if you will be outside of the territorial boundaries of California?

A. Yes, sir, I will be outside those boundaries.

Q. So that we might cover the same point at this time, is that also true of Lieutenant Bartlett?

A. Yes, sir. The ship, the "Hermes", will be outside of those waters.

(Deposition of Spencer F. Hewins.)

Mr. Adams: I have no further questions.

Mr. Collins: I have just one or two other questions.

Recross Examination

Q. By Mr. Collins: You stated that the "Hermes" recovered a body, and Lieutenant Bartlett stated that it was Mr. McGrath. Do you recall when that body was recovered by the vessel?

Lieutenant Bartlett: It was longer than three weeks. The condition of the body was badly decomposed. [740]

Q. By Mr. Collins: Did you find papers on him by which you identified the body? A. Yes.

Q. And you identified him, as Lieutenant Bartlett said, as Mr. McGrath?

A. I would have to refresh my memory to tell you that. I am not sure, but I think it was McGrath.

Q. Is that the only body you recovered on the "Hermes"? A. Yes.

Mr. Collins: That is all.

Recross Examination

Q. By Mr. Bullard: You testified, Lieutenant, that around in the vicinity of September 4, 1940, there were about three vessels either coming in or going out southbound between Los Angeles and San Diego and points south.

Mr. Adams: That he observed.

A. My estimate is just as good for September

(Deposition of Spencer F. Hewins.)

4th as November 4th. I don't remember on that day particularly, but the average number of ships on that southerly run entering or leaving from the south is around three.

Q. What were your opportunities of observation around that time? Were you on 24 hour duty?

A. I might have been asleep, but they will call me for most anything.

Q. How would you determine that a particular vessel was [741] headed for San Diego or for the Canal?

A. From the direction in which it was going. Oh, I see.

Q. If you saw the stern of a vessel leaving Los Angeles harbor, how could you tell where it was going?

A. Ordinarily we would trail them almost to the point where they would change course for San Diego and keep them in view as we returned toward the harbor; we would later observe a change of course. Aside from that, we have means of knowing where they are bound.

Q. Other than speaking the vessels themselves?

A. Yes.

Q. What was the situation with reference to the incoming vessels? How could you tell where they were coming from?

A. We also have that information.

Q. Before you saw the vessel you had some information leading you to suspect the arrival of that vessel?

A. Yes.

(Deposition of Spencer F. Hewins.)

Q. Of course, you can't tell by looking at a vessel coming from the south whether she is coming from San Diego or from Seattle?

A. No, you couldn't tell where her last point was from the way she happened to be heading in.

Q. Vessels approach Los Angeles harbor from all directions? A. Yes.

Q. They might be coming from Honolulu or Japan or [742] Catalina or Seattle?

A. Yes.

Q. Almost any of the points of the compass?

A. Yes.

Mr. Bullard: That is all.

Recross Examination

Q. By Mr. Clough: You say when a vessel is coming in the harbor from a point just opposite the "Olympic", where it was parked—what is its direction—342? A. 340 true.

Q. And when they are traveling in that direction how far away would they be from the "Olympic" tackle?

A. The distance would vary, as I said, depending on the accuracy of the navigator in carrying out his intention, which may or may not be 340, and hit the lighthouse on the head, but, as I say, the ones I observed the most of were bound in from the south and approaching the harbor.

Q. Then how far away do you observe them to be ordinarily, generally, from the "Olympic" place?

(Deposition of Spencer F. Hewins.)

A. Oh, from 300 to 1,000 yards west, sometimes more.

Q. And if a vessel comes to a point where it would be in direct contact with the "Olympic II", would you say it was traveling on a 340 true course?

A. Very, very close, yes.

Q. It would be very close? [743]

A. Yes.

Mr. Bullard: That is, coming from the south?

Mr. Clough: Yes, if the vessel were coming from the south. I think that is all.

Redirect Examination

Q. By Mr. Adams: Lieutenant Hewins, if six vessels started from down the coast at a fixed point, all at the same point, and all steered 340° true, when they arrived at Los Angeles harbor, still on that course, opposite where the barges were anchored, would they all arrive at the same fixed position?

Mr. Bullard: I object to the question as calling for the conclusion of the witness, and no proper foundation having been laid.

Mr. Adams: I think it is explanatory of the testimony before, and for that reason I ask the witness to give us the benefit of his knowledge on those matters?

A. If you set a rifle in a rest, you are going to have a dispersion of shot, and the vessels, in my opinion, would certainly not be at the same place, no, decidedly not.

(Deposition of Spencer F. Hewins.)

Q. And if a vessel started from a fixed position down the coast, northbound to Los Angeles harbor, on one day, and then started from that same position, let us say, the next day, would it arrive at exactly the same spot when it gets opposite Los Angeles harbor? [744]

A. For the same reasons, no.

Q. What are the reasons that explain that?

A. Just take one ship, for example, or different cargoes, and on different days he will be laden in different manners, so that he may be drawing more water aft than he is forward, or the variance would be different on different occasions; it might be light, and in that case the wind would carry him to a greater extent than if he was laden, and that varies with the degree of lightness or lading of the vessel.

Q. It also varies from day to day, doesn't it?

A. Yes, sir. And also the condition of the bottom of the ship; he wouldn't go as fast as he thought he was going, or he wouldn't be going as fast as he had a month before, because there was more marine growth and barnacles on the bottom. The current of the sea would be different, the direction of the sea may be different, the direction and force of the wind would be different, and in the case of different vessels the differences would be more marked, because of different characteristics in the hulls of those vessels.

(Deposition of Spencer F. Hewins.)

Q. So that although there might be numerous vessels coming up the coast from the Canal, all steering 340° true, they are not going to end up opposite Los Angeles harbor at the same position, are they?

Mr. Bullard: I object to the question as leading and [745] suggestive, and calling for a conclusion of the witness, and no proper foundation has been laid.

Mr. Lippert: You mean necessarily, don't you?

Q. By Mr. Adams: Yes, they are not necessarily going to end up in the same position opposite Los Angeles harbor, are they? A. No.

Q. Now, that would be especially true, would it not, if the vessel for the last six hours prior to its approach to Los Angeles harbor had navigated by dead reckoning?

Mr. Bullard: The same objection.

A. They wouldn't arrive at the same point.

Q. By Mr. Adams: Assuming a vessel had her last landfall, or took her last bearing, at least, somewhere around midnight, and proceeded up toward Los Angeles harbor on a course of 340° true, if she collided with the "Olympic II" that would be pretty good dead reckoning navigation, wouldn't it?

Mr. Clough: That is objected to as calling for a conclusion of the witness.

Mr. Bullard: I wish to express the same objection as that last set forth in detail.

Mr. Eastham: I join in both objections.

(Deposition of Spencer F. Hewins.)

Mr. Collins: And there is no showing as to the point at which the 12:00 o'clock bearing was taken.

Mr. Adams: I know it. I can't remember what that was, [746] but I will find out in a minute.

A. I don't feel qualified to state where he would arrive from dead reckoning navigation. "Dead reckoning" is "deduced"; it comes from "deduced", "d-e-d", and, speaking of "dead reckoning", it was later misspelled "dead"—it might have been misspelled.

Mr. Adams: I won't pursue that line of interrogation, in view of the fact that it might be outside the scope. That is all I have.

Recross Examination

Q. By Mr. Bullard: With reference to this course of 340° true, that will vary somewhat, will it not, depending upon the last point of departure which is taken?

A. Yes, sir. He may, or any incoming vessel may find himself, in his first landfall, his first fix that he is able to take would put him in a position where 340 wouldn't take him into the harbor, and under those circumstances he certainly wouldn't steer it.

Mr. Adams: That is all.

(Signature of the foregoing deposition waived by the witness and by respective counsel.) [747]

DAVID H. BARTLETT,

called as a witness in behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Will you kindly give your full name, Lieutenant Bartlett?

A. Lieutenant David H. Bartlett.

Q. You reside in San Pedro?

A. San Pedro.

Q. And you are connected with the United States Coast Guard Service? A. I am.

Q. What is your present station or duty?

A. Executive officer of the Coast Guard cutter "Hermes", at San Pedro.

Q. How long have you occupied that position?

A. I have occupied that position since August 20th.

Q. 1940? A. 1940.

Q. You were serving in that capacity, were you, on September 4, 1940? A. I was.

Q. How long have you been in the Coast Guard Service?

A. I entered the Coast Guard Academy in August of 1929 [748] as a cadet, and graduated on the 15th of May, 1933, as an ensign.

Q. Have you been in the service continuously since your graduation? A. I have.

Q. Since your graduation have you served aboard Coast Guard vessels at sea? A. I have.

(Deposition of David H. Bartlett.)

Q. Lieutenant Bartlett, do you recall the day of September 4, 1940, and the fact that a collision occurred on that day between the "Sakito Maru" and the "Olympic II"? A. I do.

Q. In the interest of saving time, I would like to ask you to narrate the circumstances of that event and the "Hermes" proceeding to the scene of the wreck, from the time that the "Hermes" first received notice that there was a collision. Can you give us a narration of those events?

A. I will. As near as I can remember, on the morning of the 4th of September, 1940, I was officer of the deck on the 4 to 8 watch in the morning. About 7:20 the fog had come in fairly thick, with a visibility of about 2, which would mean about 500 yards. The "Hermes" was moored at the Coast Guard buoy in the outer harbor west of Los Angeles breakwater light. At that time we received word that the fishing barge had been rammed and sunk, and proceeded to get under way and feel our way out of the harbor. At 7:30 we [749] were under way, threading our way through small fishing vessels and anchored merchant vessels, and at 7:52 passed Los Angeles breakwater light, and set the course at 162°, gyro compass, full speed, sounding fog signal. As we passed the breakwater light the commanding officer relieved me and instructed me to prepare a lifeboat for lowering at the scene of the collision. At 8:14, approximately 8:10, we arrived at the scene of the wreck, at which I noticed

(Deposition of David H. Bartlett.)

considerable boxes, an overturned lifeboat, broken planks strewn on the water. I also noticed a ship's lifeboat fully manned skirting the wreckage due south of us. A merchant vessel was on our starboard bow, which we had followed out of the harbor, just heading south, on our port hand, and an anchored fish barge was on our port beam. Midway between this fish barge and the merchant vessel under way was another large merchant vessel anchored. I was ordered to proceed to the identified Japanese merchant vessel "Sakito Maru" and board that vessel, which I did. After leaving Los Angeles breakwater light and leaving the bridge and going down on deck of the "Hermes", I noticed that the fog was in layers. By this I mean horizontal layers with the water, the lightest being near the surface, very thick about the level of the bridge of the "Hermes". As we continued out on the course the fog lightened until we reached the wreck, where it was a continual haze. The fog later lifted, and about 10:00 o'clock it turned out to be a [750] clear sunshiny day.

Q. Does that about cover it, Lieutenant?

A. That about covers it.

Q. About how high above the surface of the water was the bridge of the "Hermes" on that particular day, that morning?

A. Approximately 20 feet.

Q. About how high above the surface of the water was the deck of the "Hermes" on which you stood that morning?

(Deposition of David H. Bartlett.)

A. My position in the waist would be about 7 feet, from the level of the water to the level of the deck, and then my height placed it just 12 feet.

Q. As the "Hermes" was proceeding out toward the wreck, did you have occasion to leave your position on the deck and go up to the bridge?

A. I walked up toward the bridge.

Q. Did you ever get as high as the bridge?

A. I was on the bridge when we left the harbor.

Q. When you first went down on the deck did you notice that visibility was greater when you reached that level than it was when you were on the bridge?

A. It seemed to be less.

Q. As you approached——

Mr. Bullard: Just a moment. I move that the answer be stricken as not responsive. I believe if you will have the answer read back, you will see that. [751]

Mr. Adams: Read the question and answer, please.

(Record read by the reporter.)

Q. By Mr. Adams: Did you mean visibility was less, or that the fog——

A. I mean in that—I mean it seemed to be greater.

Q. In other words, the fog seemed to be less and visibility seemed to be greater?

A. There seemed to be less fog down there, and you could distinguish a hull underneath this layer

(Deposition of David H. Bartlett.)

of fog, but you couldn't distinguish the characteristics of the vessel.

Q. Did that condition continue constantly until you arrived at the scene of the wreck, or was there some variation of that from time to time?

A. As we proceeded, continued out toward the wreck, the condition got better. In other words, the fog was lifting. And also, as the Captain testified, the sun was getting to a higher angle, and visibility was increasing.

Q. I take it that when you arrived at the scene of the wreck you saw one of the lifeboats manned by a Japanese crew? A. I did.

Q. Did you observe that lifeboat again after you had gone aboard the "Sakito Maru" and returned to the "Hermes"? A. Yes, I did.

Q. Where was the lifeboat at that time?

A. The lifeboat had come along the port side of the "Sakito Maru". [752]

Q. Did you see more than one lifeboat from the "Sakito Maru" any time you were out there?

A. As I remember, there was another lifeboat lowered on the starboard side of the "Sakito Maru", and was tied along in the waist of that vessel, alongside.

Q. What was the lifeboat of the "Sakito Maru" doing when you first observed her, when you first arrived?

A. There was a man standing in the bow of the lifeboat, and the bow was pointed into the accumu-

(Deposition of David H. Bartlett.)

lated wreckage, and he had a boat hook, and he was peering into the wreckage, as was the officer in charge of the boat, searching it.

Q. Did that wreckage consist, among other things, of an overturned lifeboat which was presumably from the barge "Olympic"?

Mr. Bullard: Is it necessary to lead the witness along this line, Mr. Adams?

Mr. Adams: He just a few moments ago, in your presence, related these matters. I mean, this is no surprise to Mr. Bullard, because he heard the same thing before.

Mr. Bullard: I am not surprised by the testimony. I am surprised by the form of the question.

Mr. Adams: You just heard the witness, before we started taking the deposition, say the same thing.

Q. By Mr. Adams: Tell us, if you can, Lieutenant Bartlett, about any lifeboat that you saw afloat there, other than one from the "Sakito Maru". [753]

A. I saw a lifeboat overturned in the wreckage. There was floating next to it a green box approximately 4 feet high and 2 feet wide and about 5 or 6 feet long.

Q. Was the lifeboat from the "Sakito Maru" in the vicinity of those objects you have just described?

A. It was, when my boat's crew and I passed that wreckage.

(Deposition of David H. Bartlett.)

Q. Was that part of the wreckage that they were probing at the time you arrived?

A. That is what they seemed to be doing, yes.

Q. As you neared the scene of the wreck did you have occasion to go on the bridge, or did you remain on the deck of the "Hermes"?

A. I walked up toward the bridge and received orders from the commanding officer, who came out on the wing of the bridge. He passed orders to me to lower a boat and proceed to the "Sakito Maru" and board that vessel.

Q. From your position on the deck of the "Hermes" as you left Los Angeles harbor and approached the scene of the wreck, what do you estimate visibility was, or did it vary from time to time?

A. As we left the harbor, as I stated, the visibility was about 2, or 500 yards.

Q. Was that from the bridge, Lieutenant Bartlett, or from the deck of the "Hermes"?

A. That was from the bridge. Then as we continued [754] away from the harbor light the fog was thinning out and lifting on the water.

Q. And I suppose the visibility continued to increase?

A. The visibility continued to increase as we continued from the breakwater on that course.

Q. When you first went down on deck did you form any estimate of what the visibility was at that time?

A. From the deck?

Q. From the deck.

(Deposition of David H. Bartlett.)

A. Visibility was greater than it was on the bridge.

Q. Do you know what distance you could see?

A. I should judge from the deck you could see a mile.

Q. By the time you got to the wreck how far do you think you could see from the deck of the "Hermes"?

A. When we got to the wreck you could see up to a mile and a half to two miles.

Q. Do you know how long the "Hermes" continued to sound fog signals after arriving at the scene of the wreck?

A. At 7:52 we left the lighthouse, the Los Angeles harbor breakwater lighthouse abeam to starboard, and at that time I was relieved of the deck, and from that time on I was busy preparing the boat to be lowered, lowering the boat, and following out my orders, and did not return to the "Hermes" until about 11:30 or 12:00 o'clock.

Q. What do you mean, you didn't return to the "Hermes"?

A. I was on board the "Sakito Maru". [755]

Q. Oh, I see. Do you recall that you heard the fog signals of the "Hermes" while you were aboard the "Sakito Maru"?

A. I was inside the "Sakito Maru", was in a closed compartment, in the internal part of the ship.

Q. You don't have any idea, then, when the

(Deposition of David H. Bartlett.)

“Hermes” might have stopped sounding fog signals?

A. No, I do not. I would have to refer to the log book.

Q. Do I understand that you remained aboard the “Sakito Maru” until about 11:30?

A. I think it was about that time. I had a pulling boat, and it takes considerable time, it took considerable time to go from the wreckage to the “Sakito Maru”, as the swell was running, and when we got alongside her lowered gangway on the starboard side we encountered difficulty in getting an interpreter on the Japanese vessel, and the ceremony of making myself known, as to what I wanted, took up considerable time, so that I judge I was on the “Sakito Maru” from about 9:00 o’clock until 11:00.

Q. Do you know when the lifeboat of the “Sakito Maru” returned to the “Sakito Maru” and was raised out of the water? Did you happen to observe that?

A. As I was going to the “Sakito Maru” her lifeboat was pulling toward the port side of that vessel, and when I got on her port side her lifeboat was alongside, receiving instructions from an officer on her deck. [756]

Q. Do I understand that was about 9:00 o’clock?

A. Around that time.

Mr. Adams: No further questions.

(Deposition of David H. Bartlett.)

Cross-Examination

Q. By Mr. Bullard: Were you charged with any duty or responsibility with reference to observing weather conditions, in your capacity as officer of the deck on that day? A. Yes.

Q. And the observations which you made and which you have described were made in that connection? A. They were.

Q. Did you observe the thickness of the second layer of heavy fog which supervened over the layer of light fog nearest the water?

A. In that condition, when you are under a fog bank, you cannot see the upper layer of fog, as the thickest effect is near the surface, and you cannot penetrate that to determine how many layers are above it. All I could determine was that the fog had lifted from the water, and that you could see underneath that.

Q. But you couldn't tell us the thickness of the layer above that?

A. I couldn't tell you the thickness of the layer above that. It might have been 300 feet or it might have been 50 [757] feet or it might have been 500 feet.

Q. I thought there was a possibility that you might have observed a cross section of it on some other object which would give some information on that.

A. I can give you some information on that. As we left the harbor, the lighthouse on the end of the breakwater, the base was more distinct than the

(Deposition of David H. Bartlett.)

lantern. In other words, I could see the details of the base of the lighthouse, where I couldn't make out the details of the top of the light or the lantern.

Q. I understand that you are not at liberty to relate any of the occurrences transpiring after you boarded the "Sakito Maru". Is that correct?

A. That is correct.

Mr. Bullard: I have no further questions.

Mr. Collins: I just have a few.

Cross-Examination

Q. By Mr. Collins: As I understand the several answers, after you arrived at the scene of the wreck-age you picked up a body; is that correct?

A. That is correct.

Q. Where was that body recovered?

A. That body was recovered about one and a half miles west from Los Angeles breakwater light, approximately 1,000 yards to one mile off the breakwater. [758]

Q. Were you able to make any identification of the body?

A. The body was badly decomposed and I couldn't make any identification, other than that it was a male, a man, about—there was no way that I could tell the age. He was full grown.

Q. How was he dressed?

A. He had on a pair of blue trousers, dungarees, and he had heavy brown Army shoes, and had a light, faded, as I recall, khaki shirt.

Q. Did you find any papers in the pockets of

(Deposition of David H. Bartlett.)

his clothes? A. I did not search the body.

Q. What did you do with the body after you found it?

A. Lowered a bunk over the side and maneuvered the body with a boat hook into the bunk, and hoisted the bunk and body about 3 feet off the water, up the side of the ship, and covered it with a tarpaulin. Then I went on the bridge to take over the deck.

Q. Did you deliver the body to someone on board?

A. We proceeded with the body to San Pedro group dock, and the body was then turned over to the police, who took it in custody.

Q. Where was that done?

A. At San Pedro group dock, in Watchorn Basin.

Mr. Collins: I have no further questions. [759]

Cross-Examination

Q. By Mr. Eastham: Can you tell whether the body you just mentioned was that of a boy about 16 years?

A. Yes. I could tell he was a grown man.

Q. He wasn't a boy?

A. No, he wasn't a boy.

Mr. Eastham: That is all.

Cross-Examination

(Continued)

Q. By Mr. Collins: Did anyone tell you later what this man's name was? There has been some

(Deposition of David H. Bartlett.)

talk today of a man by the name of McGrath. You said something about a man by the name of McGrath, and I was wondering how you came to understand that.

A. I read in the San Pedro Pilot that the body recovered by the Coast Guard cutter "Hermes" was identified, I believe, as McGrath. Other than that, I have no definite information.

Mr. Collins: That is all.

Mr. Clough: That is all.

Mr. Adams: Anything further? I believe that is all, Lieutenant Bartlett.

(Signature of the foregoing deposition waived by the witness and by respective counsel.)

(It is stipulated by counsel and the witnesses named in the within transcript that signature of the depositions by the deponents is waived.) [760]

Mr. Cluff: With the exhibits?

Mr. Adams: With the exhibits. I also at this time offer the deposition of Mr. H. Moynahan, together with the exhibits attached.

Mr. Montgomery: I want to make an objection to the offer of the Moynahan deposition as being 90 per cent hearsay; irrelevant, incompetent and immaterial; and not binding in any way upon the interveners represented by me, and not bearing upon any of the issues of the case.

The Court: I am going to take it for what it is worth. I think I can judge what will have weight with me, and it will be a part of the record. [760a]

SAKITO EXHIBIT No. H

DEPOSITION OF PHILIP J. MOYNAHAN

Deposition of Philip J. Moynahan on behalf of Respondent-Claimant-Petitioner and Cross-Libelant Nippon Yusen Kabushiki Kaisya, before Doris B. van Aller, as Commissioner, in and for the County of Mobile, State of Alabama, in the offices of Messrs. Pillans, Cowley and Gresham, Suite 510 Van Antwerp Building, Mobile, Alabama, on the 10th day of September, 1941, at 10:00 o'clock in the forenoon.

The witness, Philip J. Moynahan, named in the attached notices, being by me first on oath duly sworn to speak the truth, the whole truth and nothing but the truth, did depose as follows:

Direct Examination

By Mr. Pillans:

Q. What is your name, please?

A. Philip Joseph Moynahan.

Q. Are you in service of the United States?

A. Yes sir. Warrant Officer, U. S. Coast Guard.

Q. Where are you now stationed?

A. Mobile Base, Mobile, Alabama.

Q. What is your age?

(Deposition of Philip J. Moynahan.)

A. Thirty-nine years. [761]

Q. How long have you been going to sea?

A. Approximately twenty years.

Q. How long have you been in the Coast Guard?

A. Sixteen years.

Q. During this period when you have been in the Coast Guard of the United States, have you been stationed on the west coast in the Los Angeles area?

A. Yes.

Q. Were you so stationed in the summer and fall of 1940? A. Yes.

Q. Where were you based then?

A. I was stationed on the U. S. S. "Hermes" Coast Guard.

Q. Where was the "Hermes" based at that time?

A. At Los Angeles, or San Pedro, the harbor for Los Angeles.

Q. Do you remember the fact of a collision between the Japanese steamship "Sakito Maru" and a pleasure or fishing barge known as the "Olympic II," said to have occurred September 4, 1940?

A. Yes.

Q. Were you on the "Hermes" then as boat-swain?

A. As Communication and Ordnance Officer, and also was performing duties of Boarding and Watch Officer. [762]

Q. What was the first knowledge that you had of the fact of the collision?

A. A dispatch received on board the "Hermes" at approximately 7:15 in the morning.

(Deposition of Philip J. Moynahan.)

Q. Was this a radio or wireless dispatch?

A. A radio.

Q. Where was the "Hermes" at that time?

A. Just inside of Los Angeles harbor break-water.

Q. Mr. Moynahan, I exhibit to you U. S. Coast and Geodetic Survey Chart No. 5143, which was published January 1936, reissued June, 1939, and corrected to July 2, 1941. Please examine that and indicate with a penciled mark the place where the "Hermes" was at the time this message was received.

(The witness did this.)

Q. You have so indicated by writing in pencil the name of the "Hermes" just inside the break-water and just west of the breakwater light—about 400 yards off. This, you say, was about 7:15 in the morning?

A. Yes.

Q. After you received this dispatch, what did you do?

A. We prepared to get under way, and did so in the next ten minutes. [763]

Q. What were the weather conditions at that time?

A. Calm and the visibility was poor. There was fog and we were unable to see in the harbor over a quarter of a mile. The fog signal was operating on the breakwater light.

Q. As you proceeded toward the place of col-

(Deposition of Philip J. Moynahan.)

lision, did the fog increase, lessen, or remain substantially the same?

A. There became less fog and visibility increased slightly.

Q. Are you able to state approximately at what time you left the harbor?

A. Approximately 7:30.

Q. Are you able to state approximately at what time you arrived at the place of collision?

A. Five or ten minutes after eight.

Q. How long had you, at that time, been stationed at the Los Angeles base?

A. About ten months.

Q. During that time, had you been constantly in and out of the harbor and over the surrounding sea surface?

A. Yes.

Q. Were you familiar with the vicinity and those vessels anchored in the vicinity? [764]

A. Yes.

Q. Were you familiar with the barge "Olympic II"?

A. Yes.

Q. And with the place where she was anchored?

A. Yes.

Q. Was she already anchored there when you joined the "Hermes"?

A. No sir.

Q. Do you know when she was anchored there?

A. Sometime in May.

Q. Of what year?

A. 1940.

Q. I note on this chart that there is a circle, having opposite it the printed word, "wreck". Do you know what that is the wreck of?

(Deposition of Philip J. Moynahan.)

A. Yes. Of the barge "Olympic II".

Q. What relation does that circle bear to the position that the "Olympic II" occupied before she sank?

A. I would say 100 yards northwest, due to the fact that the "Olympic II" was pushed some distance by the "Sakito Maru" before sinking, according to the statement of the Master of the barge, "Point Loma", made to me shortly after the accident, while we were searching in the vicinity of the wreck. [765]

Q. Where were you stationed on your ship during your passage out from the harbor to the scene of the wreck?

A. I was on deck, preparing two boats for lowering away.

Q. You did not go up to the bridge?

A. I may have gone up there, but didn't stay any length of time.

Q. Your duties were on deck?

A. Yes. I went up to the bridge, possibly two or three times, but did not stay there any length of time.

Q. During the time you were on that Los Angeles station, did you see, from day to day, ships coming into and going out of the harbor and the courses these ships took? A. Yes.

Q. Were you familiar with sea lanes into and out of San Pedro or the Los Angeles harbor?

A. Yes.

(Deposition of Philip J. Moynahan.)

Q. I wish you would state whether the position of the "Olympic II", as indicated on that chart, was in or out of any of the sea lanes?

A. I would say just outside of the main sea lane of that course usually taken by ships leaving Los Angeles on a southerly course for the Canal Zone and other points South. [766]

Q. Would that be equally true if the vessels were bound in, from the opposite direction?

A. Yes, it would simply mean that they were coming in on a reverse course.

Q. Speaking from your twenty years experience at sea, and your knowledge of conditions in that harbor, and in and out of it, please state, in your opinion, if it was dangerously close or a safe distance away?

A. Dangerously close.

Q. Please, with a pencil indicate upon the said chart the position occupied by the "Olympic II" prior to the collision.

(The witness does so.)

Q. You have made upon the chart a pencil mark, by which you have written the words "Olympic II". Did you see the barge "Olympic II" daily, or at almost daily intervals, from the time of her mooring until time of the collision?

A. I wouldn't say daily, as we were operating on patrols which were ten days out and ten days in. We also at times took long trips away from Los Angeles. [767]

Q. Frequently?

A. Yes, frequently.

(Deposition of Philip J. Moynahan.)

Q. Was she in the same place throughout that period? A. Yes.

Q. How was her mooring?

A. Fore and aft.

Q. By that phrase, do you intend that she anchored at bow and stern to hold her rigidly in place?

A. Yes.

Q. So she could not swing with the wind and tide? A. Yes.

Q. Does the length of pencil dash you have put upon chart to indicate the place of "Olympic II" before the collision, lie with its length fore and aft the same way the barge lay?

A. As near as I can remember.

Q. Is it substantially accurate? A. Yes.

Q. So that she lay dangerously near the steamer lane, she was also approximately athwart-ship to the course of steamers, not lying parallel to that course? A. Yes.

Q. Were there other barges of the same type anchored in the same fashion, in that vicinity? [768]

A. In the near vicinity.

Q. Do you remember their names?

A. "Point Loma" and the "Samar".

Q. Will you indicate on the chart the approximate positions at which they were anchored?

(The witness does this.)

Q. You have made upon the chart penciled dashes of the same type that represent the "Olym-

(Deposition of Philip J. Moynahan.)

pic II", and have written in pencil the respective names of the barges. With them drawn, as I understand you, there is shown the approximate location, roughly in a line, of the three barges as they were anchored immediately prior to the collision?

A. Yes.

Q. Please produce this chart that you have been testifying about, and have made memoranda on, to the commissioner to be attached to your testimony as Exhibit A thereto.

A. I do this.

Q. I understood you to say, Mr. Moynahan, that the "Olympic II" was anchored in place in the same fashion in May and stayed so anchored in the same place until the collision? [769]

A. Yes.

Q. Do you know about when the other two barges were anchored?

A. I don't remember exactly. I believe that both the "Samar" and "Point Loma" were anchored in their positions prior to the time the "Olympic II" anchored in hers.

Q. It was about the same time?

A. It may have been a month before or two weeks before. It was approximately the same time. One of them was anchored in her position from early in the fishing season, but I don't remember which one.

Q. When does fishing season begin?

A. In the early Spring.

Q. So that, beginning in the early Spring and running down to the time of collision, those barges

(Deposition of Philip J. Moynahan.)

were anchored fore and aft in the same place and the same fashion as you have testified?

A. Yes.

Q. Please state whether or not, in your capacity as Boarding Officer, you went upon the barge "Olympic II" between time of her anchoring in May and time of collision? [770]

A. Yes, I and Ensign B. D. Shoemaker, Jr. boarded the "Olympic II", the "Point Loma" and the "Samar" sometime in the latter part of May or the early part of June. I don't remember the exact dates.

Q. In 1940? A. Yes.

Q. Let's confine ourselves now to the "Olympic II". When you and Mr. Shoemaker went aboard the "Olympic II", did you have any talk with anybody? A. Yes.

Q. With whom? A. The person in charge.

Q. If it had been a navigating ship, you would call him the Master? A. Yes.

Q. Who did the talking, you or Mr. Shoemaker?

A. Both of us.

Q. Please state as nearly as you can what was said by the boarding party, you and Mr. Shoemaker to the Master, and what he said in reply. State it substantially as accurately as you can.

A. We made our boarding in a routine manner, inspecting all equipment etc. and in the course of our conversation with the person in charge, informed him that [771] we thought that they were anchored in a very dangerous place.

(Deposition of Philip J. Moynahan.)

Q. Was any reply made by the Master?

A. He replied that he had, of course, nothing to do with that; he was only acting for the owner. He gave us the name and address of the owner. I don't remember anything more.

Q. This person in charge, or Master that you talked with on the "Olympic II": Did he have a Master Mariner's license?

A. He had sufficient license to enable him to be Master of that barge.

Q. Was he licensed by authority of the United States?

A. Yes. Steamboat Inspection Service.

Q. Mr. Moynahan, you are a navigator?

A. Yes.

Q. You have to be to hold your job?

A. Yes sir.

Q. Are you familiar, as a navigator, with compass courses? A. Yes.

Q. Courses that vessels steer entering and departing from the harbor of Los Angeles and San Pedro?

A. Yes. Naturally we would plot our course every time, unless it was a course over which we had run many times. [772]

Q. Did you know, when you were out there, what course vessels bound for the Panama Canal or the West coast of South America normally adopted?

A. The course would be 160 degrees true.

Q. And coming up would be the reverse of that?

(Deposition of Philip J. Moynahan.)

A. Yes, or 340 degrees true.

Q. Let us take up your boarding of the "Point Loma", the closest barge to the "Olympic II".

A. Yes.

Q. You boarded the "Point Loma" on the same boarding trip? A. Yes sir.

Q. That was still you and Mr. Shoemaker?

A. Yes.

Q. What happened on the "Point Loma"?

A. We went through the same procedure that we always do in boarding, inspecting equipment etc.

Q. Did you talk with the man in charge of the "Point Loma"?

A. The person in charge made the statement that he did not see why the Coast Guard had to be boarding him continuously looking for violations of the law, and informed us we "already had ours", but he had a living to make. That was substantially what he said, or words to that effect.

Q. Was that in response to something you gentlemen said to him, and if so, what? [773]

A. No. Nothing at all. We asked for his papers to examine them, and he said this in the course of our inspecting the equipment, etc.

Q. Did you have any talk with the "Point Loma's" Master about whether there was or was not any danger in the location in which he was anchored?

A. Both I and Ensign Shoemaker informed him we thought he was also anchored in a dangerous place.

(Deposition of Philip J. Moynahan.)

Q. Was it in response to this that he made the statement you have just recited?

A. It may have been. I do not remember exactly.

Q. Then you boarded the "Samar"?

A. Yes sir.

Q. Did you have any talk with her Master along the same lines, and among other things about the danger of her place of anchorage?

A. Yes.

Q. Was there any response made to that, as to the "Samar"?

A. I don't remember. I do not believe so.

Q. Getting back to the place of collision, when you arrived there, on morning of collision, were there any boats in the water when you got there?

A. Yes. Two small fishing boats, searching among the debris and wreck left from the "Olympic II". Also [774] the lifeboat from the "Sakito Maru".

Q. Did you see the "Sakito Maru" at that time?

A. Yes.

Q. Was she in motion or anchored?

A. Anchored.

Q. What position did she bear with reference to the wreckage of the "Olympic II"?

A. Southeast, approximately one thousand yards from the wreckage amongst which I was searching.

Q. At the time you got there and began searching among the wreckage and saw the "Sakito Maru" and other boats, what were the conditions of visibility?

A. Slightly more than a mile.

Q. When you got up to the wreckage and began

(Deposition of Philip J. Moynahan.)

searching, was that done from the cutter alone or by putting out small boats?

A. I did that with a small boat. I went in No. 1 lifeboat, in charge.

Q. You went over in your little boat and joined the other three vessels searching for survivors through the wreckage? A. Yes. [775]

Q. Did you have any talk with any people in the other little boats while searching?

A. Yes, with operators of the two small American Power Fishing Boats.

Q. Did either of them say anything to you with reference to weather conditions immediately preceding the accident, as observed by them?

A. Calm and foggy and visibility approximately one-half mile.

Q. Where were these two fishing boats at moment of collision?

A. Fishing about one-half mile southeast of the "Olympic II".

Q. That was what they told you? A. Yes.

Q. Were they able, from where they were, to see the "Olympic II"?

A. They stated they were not.

Q. Could they hear any signal from the "Olympic II"?

A. Could hear the fog bell very faintly.

Q. Did they see a steamship pass bound in shortly before the collision? A. Yes.

(Deposition of Philip J. Moynahan.)

Q. That turned out to be the "Sakito Maru"? [776]

A. Yes.

Q. Did they say whether or not she was sounding her fog signal? A. That she was.

Q. Proceeding at high or low speed or how?

A. Very slowly, according to their statement.

Q. Then they heard the collision and hurried to the scene of the wreck themselves?

A. Yes. They heard when she struck, sound signals made, and other hullabaloo, and then they proceeded up to the scene of the wreck to see what was happening and help if they could.

Q. While you and these other boats were searching the wreckage was when you had conversation with the two fishermen? A. Yes.

Q. Do you know their names or who they were?

A. I don't remember.

Q. Were they pleasure fishermen or professionals?

A. As I remember, one was a commercial fisherman and one fishing for pleasure. I took their names and addresses at the time and reported these to Lt. Hewins, together with a memorandum of what they had said.

PHILIP J. MOYNAHAN

[Endorsed]: Filed Sep. 13, 1941. [777]

CAUTION

Temporary changes effects.

Light, Buoy and Day Beacon
which show the same light as the original, but which
will be established and are temporarily replaced by each
of different characteristics, are indicated in red by the
following abbreviations.

D Discontinued, as far as established.
R Temporarily replaced by a red buoy.
T Temporarily replaced by a temporary light.
TFR Temporarily replaced by a fixed red light buoy.
TFLB Temporarily replaced by a flashing red light buoy.
TFLRB Temporarily replaced by a flashing red light buoy.

RADIO BEACON
For schedule of operations see Light List and for other
Ships.

Los Angeles Harbor Lightships - On 1 and 2.

STORM WARNING

The U.S. Weather Bureau displays storm warnings
(Per No. 1, Outer Harbor.)

Cable on
See chart 5147
given within the

SIGNAL HILL
WHITE TOWER

LONG BEACH

CHANNEL

PEDRO BAY

DECK CONSTRUCTION

SEAL HILL

VARNISSEY IN 1940

ANNUAL CHANGE ZERO

SEA AREA anchorage

PIC II

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CAUTION

The side limits of the improvement are shown in Figure 1. The controlling depth through the channel, or placed in or alongside the channel, or in a depth greater than the project depth is given. Shoaling, particularly at the edges, if must not depth stated existed throughout the entire width on the date of the examination analysis has not since decreased in places across the river.

THOMSON AFTER

© TANK



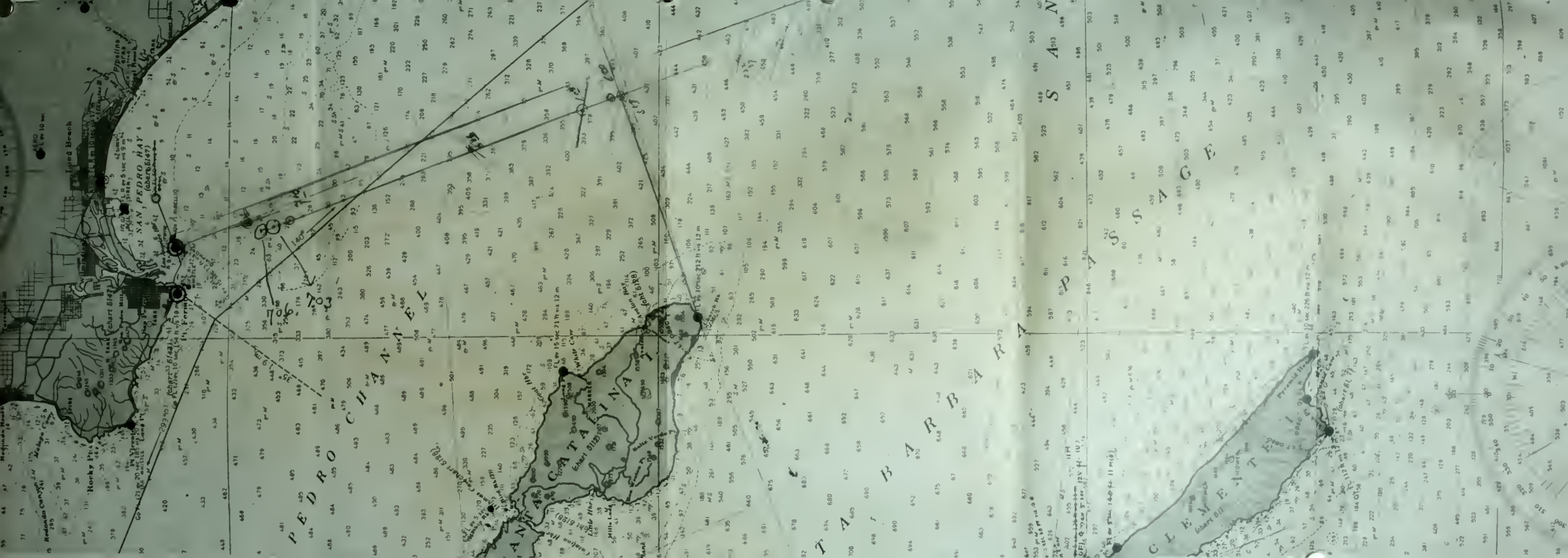
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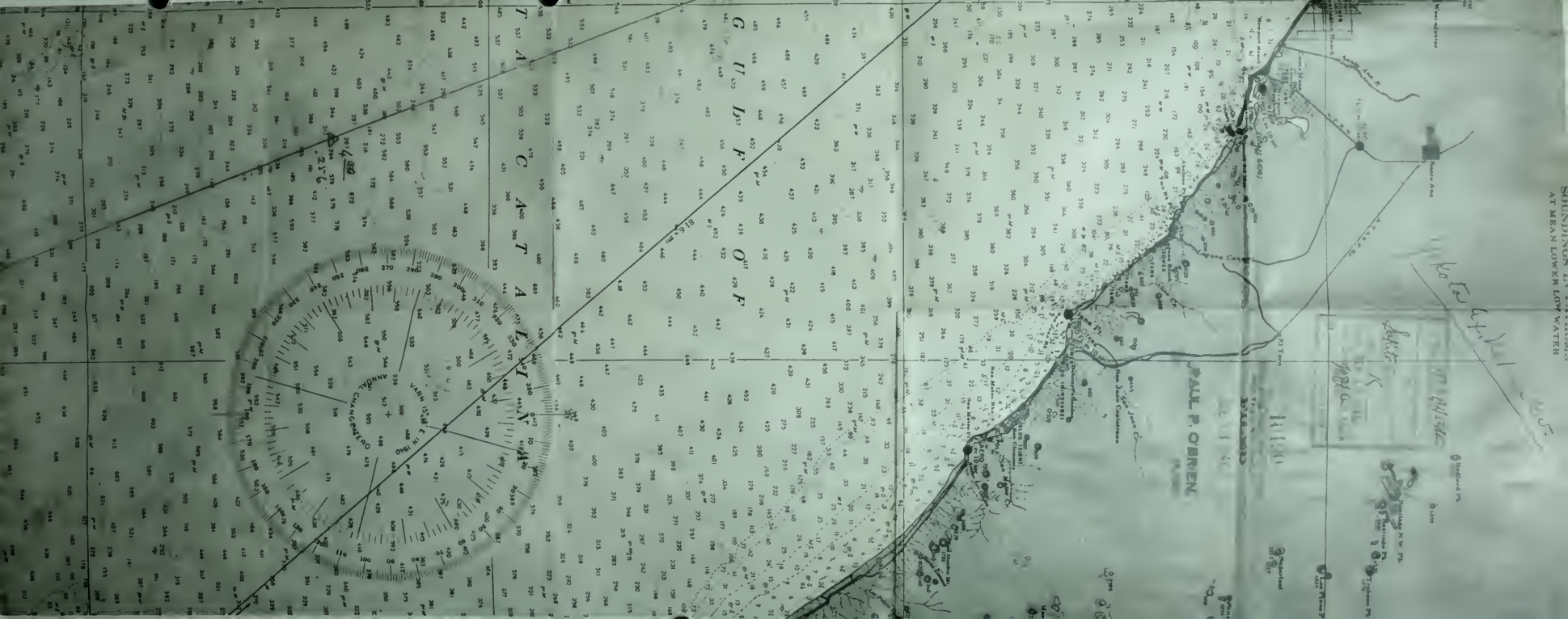
PAUL P. O'BRIEN.

) SEP 13 1941

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SOUNDINGS IN FATHOMS
AT MEAN LOWER LOW WATER



Mr. Cluff: I think we can specify the objections, and file them in the case.

Mr. Adams: There is one feature about filing objections at a much later stage, after the evidence has been closed. I feel that Mr. Cluff perhaps has not appreciated this situation, that if certain evidence is ruled out in a deposition of one witness because of some objections, that might be overcome by the testimony of another witness, which we could, of course, obtain, or make an effort to do so, which I am in no position now to do.

The Court: I am not going to sustain many objections. [780] I am going to read these, and so far as the Court is concerned, he has read them, and you can't strike them from the Court's mind entirely, but it is true, as stated by Judge Montgomery, that any statements that Moynahan may have made to somebody on board the "Olympic", or one of the other barges, would not be binding on his client.

Mr. Adams: They are certainly binding upon everybody concerned with reference to the issue as to who was at fault for this collision. If that evidence proves that Hermosa was at fault, as a consequence of that, it is binding.

The Court: I know, but until we have heard all the evidence and you people have had an opportunity to brief it, we are not going to pass upon the question of fault. Hermosa may be entirely at fault, and it may be only partially at fault, and the same might be true with the "Sakito Maru". You gentlemen in your pre-trial briefs have been kind enough to give me the major and minor fault

rules; that will have to be considered, as the fault develops, as to what categories they fall into.

Mr. Montgomery: There is another consideration too, your Honor. The "Sakito Maru's" counsel has argued that the doctrine of contributory negligence applies. That does not apply, so far as the intervenor is concerned. It would merely be a matter between them and other boats.

The Court: I think it might apply to somebody employed on the boat, who had knowledge. You can't seriously contend [781] that it would apply to these poor people, for instance, the passengers that landed on that boat five minutes before the accident.

Mr. Adams: I grant you the question of proof would certainly be difficult in that case, but I think Judge Montgomery is in a worse position perhaps than other libelants to make an objection on this score, because Mr. Karsh was on the barge continually, and was certainly acquainted with the condition of the barge, having been on her for three or four months.

The Court: I am going to listen to the issue of contributory negligence when evidence on that is presented. I presume the same rule is true that the burden of proof is upon the one that alleges it.

Mr. Adams: I don't wish to make any firm commitment on that, but I think your Honor is right; I think the burden is on us.

The Court: We will take an adjournment until 2 o'clock.

(Adjournment until 2 o'clock p. m. of the same day.) [782]

Los Angeles, California
Thursday, September 18
2:00 a. m.

Afternoon Session

Mr. Adams: If the court please, I have in my possession a letter that I spoke of this morning, from Captain Fisher, supervising inspector of the seventh district of the Bureau of Marine Inspection & Navigation. I would like to ask Mr. Cluff if this letter may be introduced along with the other letters on this subject?

Mr. Cluff: I will stipulate that Captain Fisher wrote the letter. Do you propose, as you suggested this morning, to follow this up with the deposition?

Mr. Adams: If there is any dispute on this point to the effect that Captain Fisher did not relax that order, then I intend to follow it up with the deposition.

The Court: In the first place, I assume that there will be made available to the court the rules and regulations of the department, upon which these instructions were given. For instance, the mere sending out of a memorandum requiring them to do certain things, unless there was authority by law or some rule, it would not be binding.

Mr. Adams: I think the court can take judicial notice of this, just like he can of the regulations of a statute.

The Court: I don't have them in my library.

Mr. Adams: We will give you citations on that, and I think some of the regulations are in pamphlet form, that we [783] can offer to the court. I don't

think it is necessary to offer them in evidence.

(Discussion relative to case pending before
Judge Beaumont omitted from the transcript.)

The Clerk: This will be "Sakito" Exhibit I.

SAKITO EXHIBIT No. I

J In Reply Refer to File No. 7711

DEPARTMENT OF COMMERCE

Bureau of

Marine Inspection and Navigation

Office of Supervising Inspector

514 Customhouse,

San Francisco, Calif.

September 17, 1941.

Lillick, Olson, Geary and Charles,

Attorneys,

311 California Street,

San Francisco, California.

Dear Sirs:

In response to your request, I have searched my file of the barge Olympic II and I do not find any record of a relaxation of any of the requirements for that barge which were promulgated in June, 1940. I have no recollection of granting a relaxation of any of the requirements which were promulgated in June, 1940.

Very truly yours,

WILLIAM FISHER,

Supervising Inspector,

Seventh District.

[Endorsed]: Filed Sep 18, 1941

Mr. Adams: If the court please, before calling the Captain, I have one witness who is employed, whom I would like to call. [784]

WILLIAM H. COLLINS,

called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

The Clerk: You will state your name.

A. William H. Collins.

Direct Examination

Q. By Mr. Adams: Mr. Collins, what is your present occupation?

A. I am master of the salvage tug "Cuyamaca".

Q. Do you hold any licenses?

A. I have both an operator's and pilot's license for San Pedro and Long Beach area.

Q. What has been your experience at sea, and in connection with boats?

A. I had my own first boat in 1906, and I have spent most of my time on the waters of Los Angeles Harbor.

Q. Are you now engaged in the salvage business?

A. Yes, salvage and general towing; mostly salvage work for underwriters.

Q. On September 4, 1940, you were master of the tug "Ray R. Clark", were you not?

A. Yes.

Q. Do you recall that as being the day of the

(Testimony of William H. Collins.)

collision between the "Sakito Maru" and the "Olympic"?

A. Yes, I recall, because I went out to tow in the barge [785] "Point Loma".

Q. Do you recall what time you went out to the "Point Loma"?

A. Around 5:30 in the morning.

Q. Do you recall what time you arrived at the "Point Loma"? A. About an hour later.

Q. Will you describe for us the weather conditions that you encountered on your trip out to the "Point Loma"?

A. It was pretty foggy going out, but after we got out into the harbor itself, it wasn't so bad until about the breakwater it was pretty thick; so thick that I missed the "Point Loma". I shut down, and heard a miscellaneous assortment of bells, and I went over to the one which I recognized by the tone as being the "Point Loma's" bells.

Q. When you got to the "Point Loma", what did you do then?

A. We went on board, and started getting her bow anchor in. We were going to move her in for the season, and we were working over the anchor, having a little trouble getting the anchor up.

Q. While you were aboard the "Point Loma" did you hear the whistles of any vessel in the vicinity?

A. Well, we could hear the bell ringing from the barge "Olympic"; also the barge "Samar". That

(Testimony of William H. Collins.)

was when I first heard the whistles of the "Sakito Maru". [786]

Q. You did hear a whistle which you believed came from the "Sakito Maru"?

A. I know definitely it did, later, but at that time I said to the fellow whom I am now working for—I was being employed by the day—I said, "I smell a Jap in the vicinity here." He said, "How can you tell?" I said, "You can always tell the whistle."

Q. You recognized her as being the whistle of a motor vessel?

A. Yes, distinctly.

Q. How many whistles did you hear?

A. Before I saw her, I would say that I heard five—at least five whistles.

Q. At what intervals did you hear those whistles?

A. That is pretty hard to say. The barges were ringing in rotation, like, say, the "Point Loma" first, and then there would be the "Olympic", and then the "Samar"; then it seemed they waited a minute or two, and you would hear the whistle. There were other small boat whistles, but that was about the rotation, I would say.

Q. Did all the whistles appear to come from the same direction, or a different direction?

A. No, the same direction; there wasn't any mistaking that.

Q. Did you later see the "Sakito Maru"?

A. Yes, I saw her right over the "Olympic", from where [787] we were standing.

(Testimony of William H. Collins.)

Q. From where you were standing your line of vision from the "Point Loma" to the "Sakito", as you sighted it through the fog, was right over the "Olympic" barge?

A. Directly over it. If she had missed the "Olympic", she would have hit us.

Q. Tell us what you observed after you first sighted the "Sakito Maru"?

A. It seemed we saw her come into sight, and I turned around to Mr. Judd, and I said, "Boy, he is sure pouring it on now." You could see a cessation of the smoke, and then all of a sudden she just poured out black smoke, or heavier smoke. I wouldn't say black smoke, but heavier, like anybody, familiar with a Diesel engine could see that she had stopped and reversed.

Q. You could see smoke?

A. A different colored smoke. She kept coming, and I said to Mr. Judd, "By God, he is going to miss her." He said, "The hell she is." By that time she hit. I could see her make a pushing motion, more than an absolute blow, because she kept on shoving it right toward us.

Q. It was your thought, as you observed it at that time, that she was going to be brought to a stop, before she reached the "Olympic"?

A. That is right.

Q. What would you say her speed was at the time she [788] actually struck the "Olympic"?

A. I don't think anyone could tell, looking at the

(Testimony of William H. Collins.)

bow of a vessel, how fast it is traveling, but it was not traveling very fast, or it would have gone right through her. As I say, it was more of a pushing motion, because it pushed her over toward us. I kept our towboat, the "Ray R. Clark", standing by, because I thought it was going to push the "Olympic" into us, until it took up the bow anchor of the "Olympic", and started to swing it.

Q. Did you see the barge move through the water, or one portion move further than another portion?

A. It started moving as the bow anchor took hold, and then the stern started swinging toward us more than the other.

Q. The stern of the "Olympic" swung, I take it?

A. Yes, it swung toward us faster than the bow did, after the heavier anchor took hold.

Q. After the "Olympic" came to rest, had her heading changed any?

A. The "Olympic"?

Q. Yes.

A. Oh, distinctly, at the time she had stopped, her bow was headed more south than it had been. In other words, without taking a compass bearing, I would say it had been heading southwest, and it was headed more south.

Q. By the Court: How far was the "Point Loma" from [789] the "Olympic"?

A. Well, I would say around 1200 feet—1,000 or 1200 feet, is what I would say.

(Testimony of William H. Collins.)

Q. How far was the "Sakito Maru" from the "Olympic" when you first saw it?

A. Approximately the same distance; the other side of him may be not quite as far. Distances on the water, as I have found after many years, are very, very deceiving. I have started out a thousand times to run a line over to something, and found out that I did not have enough.

Q. In other words, you generally underestimate than over?

A. Usually, because you will say, "I have got 1200 feet of line, and that will reach over there", and you roll it out, and when you reach the end it still doesn't make it.

Q. By Mr. Adams: As you observed the "Sakito" approaching the "Olympic", did she seem to change her course, or did she seem to remain on the same course?

A. It did not seem to me she changed at all. With a twin screw vessel, when you back down, you lose steerage way. It did not seem to change at all, to me.

Q. Did you continue to watch the two vessels after the collision?

A. Well, I did, until I hollered to this fellow on the "Clark", my deckhand, who was running it, to come over close. I heard him blow a long and short whistle before, because it [790] looked for a minute or two that they were going to push the "Olympic" into us. I figured there was already

(Testimony of William H. Collins.)

the "H-10" and their own boat standing by there. [791] When I saw that the "Olympic's" lee-way had stopped definitely, and also the "Sakito Maru", I was going down to the lower deck; I was standing on the upper deck there, and I took another look, and then I saw her sink.

Q. While you were watching the "Sakito" and the "Olympic" as they both moved through the water, did you ever see the stem of the "Sakito" separate from the "Olympic"? In other words, did you see the two vessels come apart in any manner?

A. Well, no, but we could see the "Olympic"—from where I was we could distinctly see the "Olympic" getting lower on the stem while she was coming at us.

Q. While she was still coming through the water?
A. Yes.

Q. When you say getting lower on the stem, do you mean she was being submerged gradually?

A. She was sinking. I remember—that's far back, but it doesn't seem to me that there was any time elapsed between the time she hit, and the mast fell over, and she started sinking; it was practically simultaneous. She listed a little bit toward us, that is, the "Olympic" did, and then she started sinking.

Q. Even before coming to rest in the water, she started to sink?

A. Yes, I would say she cut her freeboard down one-third before the "Sakito" stopped her forward way. [792]

(Testimony of William H. Collins.)

Q. Did you observe anything at the time the "Olympic" came to rest, or about that time?

A. It looked to me like she sank out from under.

Q. Under what?

A. Under the bow of the "Sakito Maru". That is the way it looked. We could see the people moving around distinctly on the boat, and it looked to me like several people, and we could see a man handing out the life preservers, and their getting into them. Several people we could see running down and back. As I recall now, I yelled at Leonard Smith, and when I yelled at my deck hand, he pulled right over there, alongside of the barge. He held it right in there. When I pulled over alongside of Leonard, with the "Clark", after that I pulled over alongside of the "H-10-17" and said, "Well, it's a good thing you were here, and got them all off." "Got them all off?" he said. I said, "You did, didn't you?" He said, "I couldn't get them down here." It looked to me that there was ample time for everyone to get off. I thought how lucky it was that he was there, and I wouldn't believe it. He said, "There are two or three more." I circled around through the wreckage that had floated off of her deck, to see if there was anything that we could do. We did not see anything for awhile, and then we got to a bunch of wreckage, about the area of this room, and I saw an arm coming out of a life preserver. We started pulling through,

(Testimony of William H. Collins.)

[793] and about that time the Coast Guard came up from the other side, and I told my deck hand, "The Coast Guard is coming, and he will get him quicker than we can get through."

Q. The Coast Guard picked up a body?

A. Somebody; the Coast Guard picked him up. Then we pulled on over to the "Sakito Maru" and looked at the hole in her bow.

Q. Mr. Collins, when you saw the "Olympic" seemed to drop from the stem of the "Sakito", was the "Sakito" still going forward, or was it stopped, or did it seem to be going in reverse?

A. I will tell you, it was such a very small time, but we saw it was just about stopped all the way around.

Q. When the two vessels came to a stop, then she seemed to drop from the stem, and sink more rapidly?

A. It just kept on sinking. The whole thing, it doesn't seem to me, took as long as I have been sitting here. It looked to me that just the minute she hit, like the "Olympic" started sinking right down.

Q. Prior to that occasion, had you been out to the barges at the Horseshoe Kelp before?

A. Yes; I had practically taken care of all the anchoring. I was working for John Harvey at the time, but I did all the anchoring for the "Samar" and the "Point Loma", and before that, for all the gambling ships.

(Testimony of William H. Collins.)

Q. When you say you took care of all the anchoring, [794] what do you mean?

A. There is more to it than it seems; you will be surprised. During the season the stern anchor will carry away, and you will have to replace it so the passengers don't get seasick, and all that sort of thing.

Q. Your work was of such a nature that it required you to go out to that area frequently?

A. Frequently. I would take water and oil out to the barges also.

Q. During the occasions you were out in the vicinity of the barges anchored at Horseshoe Kelp, did you ever observe merchant vessels passing by?

A. I would say so. I was almost hit by the "Calmar" boat, when I was working on the "Point Loma" before.

Q. When was that?

A. The same year, but earlier in the season. And one time I was working on the "Samar's" stern anchor, and I believe it was an American-Hawaiian boat that went between the stern anchor where I was, and the ship. I was lifting the anchor, and I said, "Get ready to get off." I had two or three tons of chain on deck, and there was nothing I could do.

Q. Did those two experiences take place during fog?

A. Yes, in fog; both of those were in fog. And at another time, at night. It didn't make any difference whether it was night or day, if an anchor got

(Testimony of William H. Collins.)

haywire Friday [795] or Saturday, you would have to have it ready Sunday, and we would work nights.

Q. On occasions when the weather was not foggy, when you were out there in the daytime, did you observe merchant vessels passing nearby?

A. Yes; they passed right by, both sides of us all the time.

Q. In both directions?

A. In both directions.

Mr. Adams: No more questions.

Cross-Examination

Q. By Mr. Cluff: There was plenty of room, on both sides, where the vessels were anchored, for vessels to pass going into the Harbor?

A. Plenty of room?

Q. Room and water.

A. Yes, they would go around.

Q. For quite a distance, to even take a 10-fathom curve to the eastward?

A. Not so far as that around that point, but quite a distance. There is all sorts of room in any direction, of course, but still, of course, you must use your eyes, if they are too close to you. I would say nearly all the skippers run close to you.

Q. A skipper that is going pretty close to anchored [796] vessels out in that vicinity, passes close to them if he chooses?

Mr. Adams: [That assumes facts not in evidence; it assumes, in the first place, that all these skippers know that the barges are anchored there.

(Testimony of William H. Collins.)

The Court: Will you reframe the question, and state it over again?

Q. By Mr. Cluff: At what time, with reference to that impact of the barge and the "Sakito", did Mr. Smith start his "H-10" over toward the "Olympic"?

A. Well, I would say that it was just before he hit.

Q. Just before he hit?

A. Yes, because he didn't see—I don't believe until my deck hand hollered at him, as I remember it—that's a long time ago—but I think the deck hand hollered at him before he noticed how close he was getting.

Q. Your deck hand, by the way, was Mr. Liddell?

A. Yes.

Q. Can you fix your time with reference to the blowing of that whistle, about the time the deck hand hollered, when you saw the change of smoke from the "Sakito's" stack, indicating a reverse in the engines? Was that just about the time you hollered to the deck hand?

The Court: Will you read the question?

(Question read by the reporter.)

Mr. Adams: I object to the question as being a bit [797] confusing and unintelligible.

The Court: I think the witness probably understands the question.

Mr. Cluff: I will withdraw it and reframe it, if

(Testimony of William H. Collins.)

I may. I am trying to fix the time when Smith started, with reference to the reversing of the "Sakito's" screws, as indicated by the change in smoke from the stack; can you orient the time that Smith started?

A. I don't think he started until, oh,—time on water, like that, doesn't mean much. I wouldn't say, because I don't think Smith even saw it.

The Court: You don't know what time he started?

A. No, I don't think Smith even saw it. I was looking one way, at the accident coming, and he was looking down at the "H-10".

Q. By Mr. Cluff: About the time your deck hand blew the whistle had Smith started then?

A. Not the first time, no. I yelled at him, because we hadn't even seen the "Sakito Maru" at the time the deck hand blew the whistle.

Q. Your best recollection is that Smith started very shortly after you saw the "Sakito" change to reverse? A. Something like that.

Q. Can you fix the time that you saw that puff of smoke with reference to the first time you saw the "Sakito"? A. About the same time. [798]

Q. About the same time you saw her smoke puff change? A. Yes.

Q. Mr. Smith in the "H-10-17" got under way and pursued the ten or twelve hundred feet, or whatever it was, over to the "Olympic", and then turned, and finally came alongside of the gangway

(Testimony of William H. Collins.)

and disembarked passengers before the "Olympic" sank, am I right? A. Yes, you are right.

Q. Anyhow, you saw Smith go over to the gangway, and get alongside? A. Yes.

Q. And you saw passengers get off onto the boat?

A. That's right, and get back over his boat onto the gangway.

Q. I believe you said you were rather surprised he hadn't gotten them all off, because there seemed to be ample time before the ship went down?

A. Yes, I was.

Q. During all that time was she settling?

A. Yes, she seemed to settle, and then hesitated.

Q. Hesitated quite a measurable length of time?

A. Not a measurable length of time, but hesitated in going on down. The whole thing, it seemed to me, it wasn't over two minutes, from the time she was hit until she sank, and during all this time things happened.

Q. Things were moving very fast? [799]

A. Yes.

Q. Did it still appear to you that the "Sakito" was right up on top of her?

A. When she finally went down? No.

Q. The "Sakito" had backed away at that time?

A. I think the "Sakito" had technically, or the "Olympic" had drifted away from it, the way I would put it.

Q. How was the set of the tide that morning?

A. There wasn't very much, as I remember it,

(Testimony of William H. Collins.)

because when we went out to the "Sakito" with the "Clark" afterward she was about in the same line. She had apparently backed about the same groove, backed out, that she came into. It was not an actual groove.

Q. I don't believe I understand.

A. The "Sakito Maru" backed out approximately on the course she came in.

Q. How was the "Clark", your vessel, tied up, or was it tied up?

A. She wasn't tied; she was just standing by; just laying to, just ahead of it.

Q. Was the motor dead?

A. It is a direct reversible motor; when it is stopped, the motor is always dead. When you start ahead, you start the motor; when you start to back, you start the motor backwards.

Q. The motor was not running? [800]

A. No.

Q. It had not been for some time?

A. I would not say it had not been for some time, but you are always jiggling to hold her into position. I was not on the "Clark".

Q. You were on——

A. The "Point Loma".

Q. Who was handling it?

A. Frank Liddell.

Q. He was handling the "Clark"?

A. Yes.

Q. So whether he would occasionally go up.

(Testimony of William H. Collins.)

ahead, and then back to hold it in position, or not, you couldn't say?

A. I didn't pay any attention.

Q. About how far would you say the movement of the "Olympic" toward the "Point Loma" continued?

A. I would say she cut the distance in about half.

Q. She cut the distance in about half?

A. Roughly.

Q. Before she finally came to rest?

A. Yes. That is, her stern did; her bow would not be quite that way, because it had checked up the anchor chain.

Q. So she must have moved by the force of the collision?

A. As I say, it must have been more of a push than a hit, because she kept on moving, whereas a hit doesn't mean much on the water. It was more of a pushing. [801]

Q. You would not be able, I suppose, to form any very definite estimate of the time that the "H-10" was alongside the gangway, and alongside the star-board side? [802]

A. No, but it seemed to me she was there quite awhile. I couldn't understand why the "Lillian L" pulled away, when Smith had plenty of time to go in.

Q. Did you see the "Lillian L" go away?

A. Yes, the "Lillian L" went away, or else it was pushed away; it is hard to say.

(Testimony of William H. Collins.)

Q. It could have been pushed away?

A. Yes.

Q. As a matter of fact, I think the testimony this morning was that the "Lillian L" was caught in the gangway with the list.

A. We were 1,000 feet away, and it is hard to say.

Q. There was quite an appreciable time that the "H-10" was lying there?

A. Yes. I thought everybody had time to get off, and we could hear the yelling, and see them putting on the life jackets, and such things.

Q. You had worked on the anchors of both the "Samar" and "Point Loma"?

A. Many times.

Q. In 1940, or previous years?

A. Previous years. In fact, for six years I had been taking care of the anchors of most of those barges out that way.

Q. I wonder if you would tell me, during those six years, how many barges were out there? [803]

A. There used to be another one they called the "Rainbow". "Rainbow", technically, wasn't the name of the barge. The barge's name was the "Samar".

Q. It simply means that she ran from the Rainbow Pier?

A. She did not run from the Rainbow Pier; she ran from the Belmont Pier. The "Star of France" was the "Olympic", and they called her the "Olympic" because she ran as the "Olympic".

(Testimony of William H. Collins.)

Q. There was the "Samar"?

A. Yes, and the "Point Loma". Before that there was another "Rainbow". That was the "Makawalla". And then, as I say, the gambling ships.

Q. Were the gambling ships further eastward or westward?

A. About a mile or a mile and a quarter eastward. They changed vicinity.

Q. They moored in that vicinity in 1938 and '39?

A. Yes, and in 1940, too.

Q. Then after our friend Warren went after them——

A. They stayed quite awhile after that. They didn't operate, but we still had to go out and take care of the anchors.

Q. Can you tell us how many years the present "Rainbow" had been out there?

A. I think that was the second year. They used to move back and forth; they followed the fish.

Q. I wonder if you are not thinking about the "Point [804] Loma"? A. No.

Q. As I understand, the master of the "Rainbow" stated somewhere that he had been out there for six years.

A. He had, but the "Rainbow" used to be below there.

Q. You mean not in the precise spot?

A. Yes.

Q. But she had been on the banks?

A. Yes.

(Testimony of William H. Collins.)

Q. The "Point Loma" had been there how long?

A. This was her first year out, or second.

Q. The "Point Loma"?

A. Yes, she had always fished out of San Diego. This was her first year, I am pretty sure.

Q. Then there was this other "Rainbow"?

A. There were never two "Rainbows" out at the same time.

Q. The earlier "Rainbow" had been out before her time? A. Yes.

Q. Or the "Makawalla". A. Yes.

Q. Do you remember the "Wolfman", Joe Shearer's boat? A. I know the "Wolfman".

Q. I remember, he had a flat bottomed barge, and had the "Penobsco". He used to be a client of mine.

Mr. Adams: In addition to the objection I previously voiced to testimony about vessels in the vicinity of [805] Horseshoe Kelp, which I wish to renew to this line of questions, I think Mr. Cluff is simply reminiscing now.

The Court: I haven't heard any objection. I have been listening.

Mr. Adams: I did not, until I thought he had definitely assumed the character of reminiscing.

The Court: You had better get down to questions.

Q. By Mr. Cluff: Aside from the barges, you have observed for many years other vessels that anchored or drifted or fished in the vicinity of what they called the Horseshoe Kelp? A. Yes.

(Testimony of William H. Collins.)

Q. On a great many occasions and at various times?

A. Yes; there are always some who fish there.

Q. Practically all during the season, day and night?

A. I am not a fisherman. I attend to anchor work mostly.

Q. You have spoken of blowing a long and short. What does that indicate?

A. A steamer not anchored, and not under way.

Mr. Adams: What is that?

A. A steamer not anchored, and not under way.

Q. By Mr. Cluff: Does that relate to a steamer, or to a tug and tow?

A. No, it relates to any steamer drifting, not under way. [806]

Q. Wouldn't you say any steamer drifting, and not under way, would be two long and a short?

A. No, that is not what the government says.

Q. We will look that up some day when we are not trying a case. How long was the whistle one long one short and a long, before the "Sakito" came in sight.

A. I don't know. I couldn't say. I knew it was once before, and once as I saw it I signalled him to blow it again.

Q. Was it as much as a couple or three minutes, the first one?

A. I would have said that, but the other day I timed myself out, and found I was an awful liar on that. I refuse to commit myself.

(Testimony of William H. Collins.)

Q. After the collision happened, you could see clearly the "Olympic", and people putting on life belts, and you could make it out from your position?

A. I could make it out from my position.

Q. You could see people putting on life belts?

A. Yes.

Q. And the visibility was then good?

A. Yes.

Q. As the "Sakito Maru" appeared to you, what was the first thing you saw there?

A. It was either the mast or the bridge. It was a different color than her deck; and her hull. I picked up [807] first—I don't remember just which it was, but it was the superstructure that I saw first; that is all I can say, because the "Olympic" was in between, and it is hard to say.

Mr. Cluff: That will be all.

Q. By Mr. Velpmen: What is your estimate of the visibility about the time of the collision?

A. I will have to answer that doubly. I would say 1,000 feet to the "Olympic" and——

Q. In answering the question that way do you have an opinion upon it?

A. And then I could see her another 800 or 900 feet the other side of the "Olympic".

Q. That is where you place the "Sakito Maru" the first time. Could you see anything beyond that?

A. I couldn't tell that. All I could see was the bow coming toward her.

Q. By the Court: When you estimated, in your

(Testimony of William H. Collins.)

testimony a little bit ago, that you were about 1,000 feet from the "Olympic", when you first saw the "Sakito Maru", it was about 1,000 feet away——

A. The other side of it, yes.

Q. That would make it about——

A. About 2,000 feet, yes.

Q. Do you know whether or not you could have seen the "Sakito Maru" before you did?

A. No, I don't believe I could, because I was looking [808] right straight at the whistle.

Q. You figured it was roughly 2,000 feet when you first saw it?

A. Yes.

Q. By Mr. Cluff: Then this 1,000 and 2,000 feet is an estimate?

A. An estimate. I did not measure it.

Q. By Mr. Black: Did you happen to notice or hear any three blast whistle from the "Sakito Maru" coming before the collision?

A. No, I didn't. I did not notice any at all. If I did at the time, it is so long ago I don't remember it now.

Q. By Mr. Cluff: The whistle on the "Clark", will you describe that? Was that an air whistle?

A. Yes, it was an air whistle; a diatone whistle.

Q. A blast?

A. Yes, it was very good, and you could hear it quite a ways.

Q. Did you ever determine how far away it could be heard under ordinary conditions?

Mr. Adams: I object to that as incompetent, ir-

(Testimony of William H. Collins.)

relevant and immaterial, and no proper foundation.

The Court: If he knows.

Mr. Adams: It is incompetent and immaterial, if the court please, unless the conditions are shown to be comparable to the ones under discussion. [809]

The Court: I did not hear what you said?

Mr. Adams: The evidence is of no materiality unless it is shown that on the occasion when he heard this whistle the conditions were the same as they were at the time of the collision.

The Court: That seems to be a pretty fine point.

The Witness: It all depends, too, on the way you would be heading.

The Court: I think I will sustain the objection.

Q. By Mr. Cluff: Let us put it this way then: Did you ever make a test of the distance at which you could hear the whistle of the "Clark", assuming a calm day, with some fog, and wind——

The Court: I think you are getting into too many assumptions in trying to figure that out. I would like to ask you, the whistle was a great deal louder than the bells on the different barges, was it not?

A. Yes, it would be louder than the bells.

Mr. Cluff: I think that answers the question.

The Witness: If it happened to be headed in the right direction. In the other direction it would not be as loud; it would be whichever way the mouth of the horn was.

The Court: Which way was the mouth headed, do you know? A. I haven't any idea.

(Testimony of William H. Collins.)

Q. By Mr. Cluff: As the "Clark" lay alongside of the "Point Loma", was her bow toward the bow of the "Point Loma", [810] or away from it?

A. She wasn't lying alongside. She was off 50 or 75 feet; I don't remember which way.

Q. You don't remember whether her bow was headed east or west, north or south?

A. No, I wasn't paying any attention; we were lifting an anchor.

Mr. Cluff: Nothing further. [811]

(M. T. Bischof was here sworn as interpreter in the English and Japanese languages.)

SYUNZI SATO,

a witness called on behalf of the respondents, being first duly sworn, testified as follows:

(Mr. Bischof interpreting.)

The Clerk: What is your name?

A. Syunzi Sato.

Direct Examination

Q. By Mr. Adams: Captain Sato, on September 4, 1940, you were the master, were you not, of the "Sakito Maru"? A. Yes, I was.

Q. You hold, do you not, a license or certificate of captain, first grade? A. Yes, I do.

Q. You have held that license or certificate since 1927, have you not? A. 1927. [812]

(Testimony of Syunzi Sato.)

Q. That entitles you to be master of any vessel of any tonnage on any ocean, does it not?

A. Yes.

Q. Captain Sato, after you finished high school, you attended the Tokio Nautical School, for five years, did you not? A. Yes, five years.

Q. You have been to sea since 1918, have you not?

A. Yes.

Q. Since your graduation from the Tokio Nautical School you have been the captain of seven vessels, have you not? A. Yes, seven vessels.

Q. Tell us the dimensions of the "Sakito Maru": Length over all——

Mr. Cluff: It is all in evidence and undisputed, so far as we are concerned.

Mr. Adams: I did not recall, Mr. Cluff.

Mr. Cluff: They are all in the deposition of Mr. Sato.

Mr. Adams: There is no dispute about it?

Mr. Cluff: There is no dispute about it.

Q. By Mr. Adams: The "Sakito Maru" has two screws? A. Yes.

Mr. Cluff: That is all in, too; her engine power, screws, kind of engine, and everything.

Mr. Adams: I can probably cover two more statements by leading questions, to save time. [813]

The Court: Proceed, gentlemen.

Q. By Mr. Adams: Is it not a fact, Captain Sato, that the "Sakito Maru" is equipped with a gyro compass which has a course recorder?

(Testimony of Syunzi Sato.)

A. It has a gyro compass.

Q. Does it also have a course recorder connected to the gyro compass? A. Yes, it has.

Q. There is no correction for the gyro compass, is that correct? A. No, it has not.

Q. Her course then is a true course, is it not?

A. Yes.

Q. At the time of the collision the "Sakito Maru" was on a round trip from Yokohama to New York and return, was she not? A. Yes.

Q. And the "Sakito Maru" had called at Los Angeles Harbor en route from Japan to New York on July 16, had she not? A. Yes.

Q. The vessel sailed from New York on August 21, bound for Yokohama via the Panama Canal from Los Angeles, isn't that true?

A. August 21 was when we departed from New York.

Q. And the purpose of calling at Los Angeles Harbor [814] was for bunkers only?

A. Yes.

Q. Prior to making this voyage, how long had it been before you were at Los Angeles Harbor on any other occasion?

A. I do not remember that definitely.

Q. Do you remember in terms of years?

A. I think it was 1937.

Q. When the vessel arrived at Los Angeles Harbor, after the collision on September 4th, was her draft 24 feet 7 inches forward? A. Yes.

(Testimony of Syunzi Sato.)

Q. And 27 feet 11 inches aft? A. Yes.

Q. Loaded as she was on that day, what speed did the "Sakito Maru" make over the ground, when the engines were full ahead? A. 16 knots.

Q. Under the same conditions, what speed did the "Sakito Maru" make over the ground when her engines were slow ahead?

A. About $6\frac{1}{4}$ or $6\frac{1}{2}$ knots.

Q. As the "Sakito Maru" approached Los Angeles Harbor, several hours prior to the collision, what course was she steering? A. 340 degrees.

Q. When had that course first been set? [815]

A. A day before, September 3rd, at 9 a. m., about; I am not positive.

Q. By referring to the log book can you refresh your memory on that?

A. Yes, I can, if I look at it.

The Court: What difference does it make when he set it, as long as within the last hour or two they were traveling that anyhow? The chart shows the course of the vessel.

Mr. Adams: You have got to get it fixed. I show you the deck log of the "Sakito Maru".

Mr. Cluff: Mr. Adams, I know from the first officer that they fixed the course off Benito, at a certain time. If you want to read that into the record, it is all right. I shan't dispute it.

Mr. Adams: I would rather let the witness refresh his memory; he is less apt to make a mistake than I am.

(Testimony of Syunzi Sato.)

Q. Is that the smooth log of the "Sakito Maru" for that voyage? A. Yes.

Q. Referring to the log, will you tell us when you first set the course of 340 degrees true?

A. Yes, I can.

Q. Please do so. A. 9:05 a. m.

Q. You now refer to the entry in the log book for the day of September 3rd, which reads: 9:05 San Benito Island [816] light—what is that?

A. House—lighthouse. [817]

Q. What does that stand for—northwest side of West—— A. West, West Island.

Q. Beam 060? A. Yes.

Q. 14½ off? A. Yes.

Q. What does that stand for: Altered course to—— A. 340 degrees.

Mr. Cluff: I wonder if we can ask, on that point, what 060 stands for.

Q. By Mr. Adams: What does 060 stand for? Is that the bearing?

A. The whole course was 340. We started on a 330-degree course; then we changed to 340 degrees.

Q. But what does the notation for that item, which was read, (060) stand for?

A. We take the 330 degrees, is the course at——

Q. Isn't that the indication of the bearing?

A. Yes, the bearing.

Q. What bore 060 from the "Sakito Maru" at that time?

A. The northwest side of West Island.

(Testimony of Syunzi Sato.)

Q. Abeam?

A. No, the lighthouse. This lighthouse is indicated in parentheses; is the northwest side of West Island.

Q. When the lighthouse was abeam how did she bear in [818] points of compass?

The Court: Gentlemen, you might explain to me what difference all this makes, as long as you have the chart here showing she was traveling 340 degrees? There is no dispute about it.

Mr. Adams: That is true, your Honor, but you can run a course 340 degrees true anywhere from San Diego to the Philippine Islands; if you don't get a fixed course of 340 true, it doesn't mean anything, but means that he was going approximately northwest.

A. 340 degrees indicates the direction.

The Court: He was traveling along here, and the two boats came together, and while San Benito Island may be important to someone else, I can't get it.

Mr. Cluff: We can all navigate once we get a fix, but if we don't get a fix we can't navigate at all.

Q. By Mr. Adams: Captain Sato, did you obtain a fix at noon on September 3rd?

A. Yes; I fixed my position.

Q. Was that by sextant observations?

A. Yes.

Q. Can you give us your position as determined in that manner at that time?

(Testimony of Syunzi Sato.)

A. The latitude was 28-52 minutes north and the longitude was 116-06 minutes west.

Mr. Cluff: That is noon, September 3rd? [819]

Q. By Mr. Adams: That is noon, September 3rd, is it not, Captain?

A. Yes; twelve o'clock.

Q. Prior to sighting Santa Catalina Island on the morning of September 4th what was the last bearing that was taken?

A. At 1:50 a. m. of September the 4th we saw the Coronado Island Light.

Q. Was that the South Coronado Island Light?

A. Yes.

Q. Was that a one-point bearing or did you obtain cross bearings?

A. Only one bearing on the lighthouse.

Q. Was the lighthouse on your port hand?

A. Starboard.

Q. Starboard hand? A. Yes.

Q. How far off were you from the lighthouse?

A. I think about $14\frac{1}{2}$ miles, my recollection.

Q. Will you refer to the log book and refresh your memory, and tell us what the log book shows on that?

A. No; I made a mistake. It was $20\frac{1}{2}$ miles.

Q. Did the "Sakito Maru" continue to proceed on a course of 340 degrees true? A. Yes.

Q. When did you first come to the bridge of the "Sakito Maru" during the morning of September 4th? [820] A. 5:58 a. m.

(Testimony of Syunzi Sato.)

Q. Where was the "Sakito Maru" with reference to Santa Catalina Island at that time?

The Interpreter: Will you repeat that question again?

(Question read by the reporter.)

A. The southeast point. At that time it was abeam.

Q. How far off was the "Sakito Maru" estimated to be from the southeast point of Santa Catalina Island at that time? A. 10½ miles.

Q. Was that distance estimated by a one-point bearing? A. Two-point bearing.

Q. Two-point bearing. How long did you remain on the bridge on that occasion?

A. About two minutes.

Q. How was the weather at that time?

A. It was very clear.

Q. Did you leave any instructions with the officer on watch before you left the bridge?

A. Yes.

Q. What instructions?

A. I told them to let me know when they got about five or six miles from the lighthouse on the breakwater, Los Angeles breakwater. [821]

Q. Were you later called? A. Yes.

Q. What time did you get up to the bridge then?

A. About 7:00 o'clock.

Q. Who was on the bridge at that time?

A. Chief Officer, apprentice officer and the quartermaster and the reserve quartermaster.

(Testimony of Syunzi Sato.)

Q. Was the first quartermaster that you mentioned the helmsman?

A. Yes; that is the helmsman, the quartermaster.

Q. How was the weather when you came to the bridge at 7:00 o'clock a. m. that morning?

A. It was clear, but by the bow it was a little misty.

Q. How was visibility off the port hand, clear?

A. Yes; it was clear on the port side.

Q. Was the starboard hand clear?

A. Yes; it was clear.

Q. But ahead it appeared to be misty?

A. Yes; it was a little misty.

Q. How far did you estimate your visibility was ahead at 7:00 a. m.?

A. About 3 miles, I think.

Mr. Adams: About 3 miles. If the court please, I have already brought out by the first officer in his deposition the various bearings that were taken from, oh, somewhere around 5:58 up until the last bearing was taken prior to [822] the collision. I can go over that ground again. I think it will serve to explain to the court any questions it might have on that score, but it is cumulative. I just would like to ascertain the court's desire.

The Court: I don't care for anything cumulative. Somebody is going to have to explain this chart to me, though, before we get through.

Mr. Cluff: I suggest, Mr. Adams, that you show—that is, I am not going to dispute the log or dispute your navigation because I have got to accept it per-

(Testimony of Syunzi Sato.)

force. I suggest you take the chart, the navigating chart they used and let the Captain interpret it for the court. I think we could probably save a good deal of time that way.

Mr. Adams: I was going to suggest, if the court wanted to go into that, perhaps it would be well to break off now before we take up the events of the collision and take up the positions of the vessel as the "Sakito" approached the barge, that is, ascertaining her positions, and I can explain the chart at this time. I just wanted to find out if the court wanted me to go into that explanation.

The Court: There is no use of going over the same ground.

Mr. Adams: I think we can do it much more rapidly than we did with the first officer, but I think it will serve to demonstrate it a little more clearly.

The Court: If we are going to take a new line, we had better take our afternoon recess. This will be a good place [823] for a break.

(Short recess.)

Q. By Mr. Adams: Captain Sato, I believe you wished to make a correction with respect to your testimony concerning visibility at 7:00 a. m., is that correct? A. Yes.

Q. What is the correction you wish to make?

A. When I testified a short while ago I said 3 miles. I meant 3 miles on either side.

Q. What was visibility ahead at 7:00 a. m., your estimate? A. About a mile.

(Testimony of Syunzi Sato.)

Q. About a mile. Captain Sato, is this the navigating chart that was used as a working chart aboard the "Sakito Maru" at that time?

A. Yes; this is it.

Q. Will you explain the bearings that were taken, beginning with the first bearing off of Santa Catalina Island until the last bearing that was taken before the collision?

A. Those lines there all indicate bearings.

Q. As the vessel approached Los Angeles Harbor, the line that we first find intersecting the course of 340 degrees true is a single line indicating what?

The Court: If you know, lead him on those things, I think. You may lead him. [824]

Mr. Adams: Yes.

Q. This first line that I refer to, Captain Sato, is a one point bearing on the southeast point of Santa Catalina Island, is that correct?

A. Yes. At that time it was not a definite, positive bearing.

Q. Then there are two more lines of the same character. Are those bearings of the same nature?

A. Yes. At that time we were able to definitely see the island.

Q. I see. Then, the next bearing as we approach Los Angeles Harbor appears to be a two point bearing or a cross bearing. Was one of the points the southeast point of Santa Catalina Island?

A. Yes.

Q. The other bearing was on the light at Lone Point, or was it just Lone Point?

(Testimony of Syunzi Sato.)

A. Not the light; just the Point.

Q. Just the Lone Point?

A. Just the Lone Point; yes.

Q. The land itself? A. Yes.

Q. Now, there were in addition to that, one, two—two more bearings taken on the same points, were there not?

A. Yes; two point bearings. From here it is definite, about definite; but from here down it was not definite. [825]

Q. In other words, indicating the third two point or cross bearing on the chart? A. Yes.

Q. There is a line drawn from a point on a course of 340 degrees true there to the southeast point of Santa Catalina Island. What does that line represent?

A. That would be 250 degrees of the side of the ship, 340 degrees.

The Court: What does he mean by that?

Mr. Cluff: Beam bearing; right straight out at right angles. A. Beam.

Q. By Mr. Adams: Was there also a cross bearing taken at that time? A. Yes.

Q. And is that indicated? That is, the position of the vessel at that time is indicated by a dot with a circle around it, opposite of which is written 5:58, is that true?

A. This circle with a dot in it marked 5:58 was the position of the ship.

Q. That represents the position of the ship, as

(Testimony of Syunzi Sato.)

you fixed it at that time, or as it was fixed at that time, from various bearings that had been taken up to that time, isn't that true?

A. Yes. Somebody else determined that.

Q. Yes, but that is what that represents, doesn't it? [826]

A. Yes, that is right.

Q. And when was this second line drawn, which is parallel to the long line on the course 340 degrees true, but which is shorter than that? A. 5:58.

Q. There is next on that course, represented by a shorter line——

The Court: Does that indicate that they changed their course at that point?

Mr. Adams: No, if I might explain——

Mr. Cluff: Go ahead.

Mr. Adams: That indicates that after they got up here, where they found that they could take bearings, they found that they had, through drifting, or slight error, or current, come off the course that they thought they were on up to that time.

The Court: They found themselves on the other course?

Mr. Adams: They were on the same course.

The Court: They found that drift, or current, or whatever it was, had taken them off a certain distance?

Mr. Adams: Yes, so they therefore again had to lay out their course, after they fixed their position.

The Court: This line as originally drawn was

(Testimony of Syunzi Sato.)

the course they intended to take?

Mr. Adams: They were following it, but as they proceeded up here, they were probably proceeding on dead [827] reckoning.

The Court: When they got to this point, instead of being on that line, they found themselves at that point?

Mr. Adams: That is true.

The Court: And they continued on that line?

Mr. Adams: That is true.

Mr. Montgomery: What does 5:58 mean?

Mr. Adams: That is the time. Above the 5:58, that was the next position shown on that new course that was laid out then, is a dot with a circle around it, and opposite it is 6. What does that represent?

The Court: That shows that was 6:00 o'clock?

A. Yes.

Q. By Mr. Adams: But there was no bearing taken at 6:00 o'clock, was there?

A. No, there was not.

Q. That position was estimated by computing the speed, was it not? A. Yes.

Q. Then there is another mark on the chart, 6:08; a dot with a circle around it. Cross bearings were taken at that time, were they not? A. Yes.

Q. It was taken on a point of land on Santa Catalina Island, wasn't it?

A. This bearing was not taken on any definite point, [828] because you couldn't see; the coast line wasn't clear.

(Testimony of Syunzi Sato.)

The Court: You might lead him through that.

Q. By Mr. Adams: You then took another one point bearing at 6:26 on the southeast point of Santa Catalina Island, didn't you?

A. Two points, yes.

Q. Then the next indication of that course is a point with a circle around it opposite the mark 7. Does that represent the position that you computed for the vessel at 7:00 a. m., that morning?

A. Yes, that was computed on dead reckoning, computing from the speed, from this point here.

Q. That point there is 6:08? A. Yes, 6:08.

Q. You had proceeded then for about 52 minutes on dead reckoning up to this position for 7:00 a. m.? A. Yes.

Q. Did you later determine, Captain Sato, that this line which represents your course at 340 degrees true was not actually your true course; in other words, did you find that your vessel had set over from this line here?

A. Which line do you mean?

Q. If you will assume, Captain Sato, that the barge that the "Sakito" collided with was approximately 3.3 miles off the San Pedro lighthouse in a direction of $159\frac{1}{2}$ true, will you fix that position on this chart as best you can? [829] Will you fix a position 3.3 miles off the San Pedro light in a direction of $159\frac{1}{2}$ true? [830]

A. Do you mean taking the bearing with the light?

(Testimony of Syunzi Sato.)

Q. Yes. A. I can't do it with this.

Q. You can't do it with that?

A. No. $159\frac{1}{2}$ is very small. I will have to give you a rough estimate. Can I make a line there?

Q. Yes. You are now making a line showing the direction $159\frac{1}{2}$ as best you can figure it?

A. Is that right, 3 miles?

Q. 3.3. A. That would be about 3.3.

Mr. Cluff: That is close enough.

Mr. Adams: May it be stipulated that that is within the circle shown there, opposite which there is a symbol for an anchor?

Mr. Cluff: Yes.

A. This is only a rough estimate. It is very hard for me to figure it out otherwise, with this instrument.

Q. By Mr. Adams: Captain Sato, assume that this point which you have just found is 3.3, $159\frac{1}{2}$ true off the lighthouse; assume that is where the barge was when the "Sakito" hit it, what accounts for the "Sakito" being in a line to strike the barge while proceeding at 340 degrees true at that time? The course plotted here would put her westerly of the barge. Can you account for it, in other words?

A. That would be east (indicating)? [831]

Q. Yes.

A. That I don't know. Possibly tide. I think it was tide.

Q. Does he mean current?

A. Current—we call it tide—when we get to the open sea we call that a current.

(Testimony of Syunzi Sato.)

Q. Do you consider it unusual that the current or tide might have set you over as much as a half or three-quarters of a mile after you had proceeded at dead reckoning for about an hour?

A. Yes, I do think it, after I thought it over.

Q. That is not uncommon?

A. It is common, about a half a mile to one side or the other, within an hour. You can notice that we even went over in that direction, taking that course, but from down below there, not only the tide, but you couldn't steer a ship on a straight course, like a train is on rails. There is nothing positive that you can go on the same course all the time.

Q. There are various factors that influence your course, is that correct? A. Yes.

The Court: May I ask counsel a question; this is for the Court's information: Assuming that the vessel proceeded on 340 true, then the collision would not have occurred, isn't that true?

Mr. Adams: No, they were still on 340 degrees true. The [832] heading of their ship was still 340 degrees, but instead of being here, as they had plotted out on this navigating chart, current or tide had set them over as they were proceeding for an hour, so that they were at a point a quarter or half a mile to the right of where they estimated they would be without such a current or tide, which they could not definitely ascertain.

The Court: The point I have in mind is this: It is the testimony of one of the Coast Guards that the usual course south was 340 degrees.

(Testimony of Syunzi Sato.)

Mr. Adams: The course coming up from the south, yes.

The Court: Coming up from the south, yes. I was wondering, with boats following that, how much leeway they would have? Here we have a situation that is undisputed, that there have been barges there for some time, and they have come close, but never hit them, and if these boats were all traveling that same route, how do you account for it?

Mr. Adams: There are several features that might be involved there. Might I make a statement on that? Of course, there are some situations that must be disregarded entirely. With all vessels coming from the south, approaching Los Angeles harbor on a course approximating 340 degrees true, during clear visibility, where the barges could be seen, they, of course, could then go around, and there wouldn't be any reason for a collision. [833] Now, if they were coming in a fog, or if their visibility was obscured as they approached the barge, even though they steered 340 degrees true, their position at any given time might be as far off the course they had originally set as the "Sakito Maru" was, when she got abeam Santa Catalina Island.

The Court: The point I am getting at is this: Supposing the boat had been on either one of these, the points of the compass would be 340?

Mr. Adams: Yes, depending on where they started.

The Court: What distance would there be at the opening, still traveling on 340 degrees?

(Testimony of Syunzi Sato.)

Mr. Adams: You can see that they were laid out here to come in just at the easterly end.

The Court: I can see it is laid out all right.

Mr. Adams: And this line took them about the westerly end.

The Court: We have been talking about channels and streams; what I am trying to get, in my own mind, is, how wide is that stream or channel, so-called, there, that existed, that boats used going back and forth?

Mr. Adams: If the court please, if they took the point of departure from Los Angeles Harbor——

The Court: They would go out exactly where this line is drawn?

Mr. Adams: Yes; it would be 160, that is what our [834] testimony shows during that time. Running 3.3 miles, there would certainly be less opportunity for them to get off their course than there would be on their last fix, which was true south of Catalina Island. When this vessel came up a course of 340 degrees true, when they could begin to fix their position by landfalls or observations, then they are going to correct their observations, so as to bring them to that point there.

The Court: Still you haven't given me the information that I am seeking. You may as well admit, gentlemen, that one of the serious points in this case is the fact that this and other barges have been anchored right out there where vessels come and go. There is going to be a question, and one of the things

(Testimony of Syunzi Sato.)

the court will have to consider, is how wide, you might say, a stream or channel, did the boats have to go and come through there.

Mr. Cluff: It is our position, I think we can demonstrate that a vessel coming in on 340 true might approach Los Angeles Harbor within this radius, and pass a matter of 3 or 4 miles within that area. Would you agree to that?

Mr. Adams: Yes.

Mr. Cluff: This is a fair, practical demonstration.

The Court: I can see how he did it. You have answered my question.

Q. By Mr. Adams: Did you, Captain, Sato, wish to say something to answer the Judge's inquiry?

[835] A. No.

Mr. Adams: Does the court have any further questions about the chart?

The Court: No.

Mr. Adams: I will proceed with the narration of events then.

Mr. Montgomery: May I ask a question there: If he had kept his course, he would not have collided, isn't that true?

Mr. Adams: No, Judge Montgomery. He kept his course.

Mr. Black: The record, I don't believe, is clear on whether the bearing 159½ refers to the place of anchorage after the collision, or the place where the collision occurred.

(Testimony of Syunzi Sato.)

The Court: As I understood it, it was the place where the barge was anchored.

Mr. Adams: It was where the barge was sunk, which Lieutenant Hewins estimated was probably maybe not over 150 yards from where the barge was when the collision happened.

Mr. Cluff: We will put in some evidence from another man on the coast guard, who took bearings while all three barges were there. What we have is 159 true 3.2.

Mr. Adams: There is a margin of difference there of maybe 100 or 200 yards.

Mr. Cluff: Which is probably accounted for by the movement of the "Olympic" from the point of collision. [836]

Q. By Mr. Adams: Captain Sato, after 7:00 a. m. did you remain on the bridge?

A. Yes. [837]

Q. As the vessel proceeded, after that time, on her course, did the conditions of visibility ahead change?

A. Yes, it gradually got worse.

Q. Did you give any orders as the vessel proceeded after 7 a. m.?

A. Yes, I did.

Q. What orders did you give?

A. At 7:03 I gave the order to stand by engines; then slow ahead.

Q. Were those two orders given almost simultaneously?

A. First I gave the signal to stand by, and then right away, slow ahead.

(Testimony of Syunzi Sato.)

The Court: What does the signal "stand by" mean?

Mr. Adams: That is the signal that I know is more customarily given aboard Japanese steamers to indicate that they are approaching a harbor, and it is to notify the engineers that they might be called upon to execute maneuvers with the engines.

Mr. Cluff: Mr. Adams, doesn't it go further than that in International; it is simply a ring down to the engine room for the engineer to get off his box, and that they are going to use the controls?

Mr. Adams: Yes. Many of the engine room personnel come on duty at that time.

The Court: In other words, you might say that means to be at attention?

Mr. Adams: Yes, on the alert. [838]

Q. What other orders did you give, besides the orders to the engine room, at 7:03, if any?

A. To the engine room?

Q. No, to anyone else.

A. I gave orders to blow the whistle, the fog signal.

Q. Who executed that order?

A. First the chief officer; then after that, continuing, the apprentice officer. [839]

Q. About how long did the first officer blow the fog signal?

A. About five or six whistles continuously. Oh, pardon me. The duration of five or six seconds.

Q. No. How many times did the first officer blow the fog signal?

(Testimony of Syunzi Sato.)

A. I don't remember definitely, about once or twice.

Q. And then the apprentice officer continued to blow the fog signal thereafter?

A. Yes.

Q. How long were the blasts blown?

A. Five or six seconds.

Q. At what intervals? A. About a minute.

Q. Every minute? A. Yes.

Q. What did you do as the vessel proceeded after 7:03?

A. I was standing lookout after that and tending to the maneuvers of the ship.

Q. You did not give any orders to change the course, did you, at 7:03?

A. No; I did not.

Q. What do you estimate visibility was ahead at 7:03? A. 7:03?

Q. Yes. [840]

A. About half a mile, a little over, possibly, over half a mile.

Q. How were your telegraphs set before the standby and slow ahead order at 7:03?

A. What signal do you mean?

Q. How were the telegraphs, the engine-room telegraphs, set? A. Full speed.

Q. That was before 7:03? A. Yes.

Q. And what was the speed with the engine-room telegraphs set at full speed?

A. About 16 knots.

(Testimony of Syunzi Sato.)

Q. Over the ground?

A. Over the what?

Q. Over the ground.

A. That was the absolute speed at that time over the ground.

Q. What was the speed of the vessel with the engines at slow ahead, loaded as the vessel was that day?

A. Before I gave the signal it was 16 knots, and it was $6\frac{1}{4}$ or $6\frac{1}{2}$ miles when I gave the signal, after the signal slow ahead.

Q. How long do you believe it took for the speed of the vessel to decelerate from 16 knots to $6\frac{1}{4}$ or $6\frac{1}{2}$ knots?

A. About three minutes, about three minutes.

[841]

Q. Do you believe, then, at 7:06 the "Sakito Maru" was proceeding at a speed of about $6\frac{1}{4}$ or $6\frac{1}{2}$ knots? A. Yes; I think so.

Q. How was the visibility ahead at about 7:06?

A. 7:06?

Q. Yes.

A. I cannot give you definite. We have no instruments to determine that. Approximately five to six hundred meters.

Q. Who was on the bridge at that time, that is, after 7:03?

A. Myself, chief officer, apprentice officer, the quartermaster, the helmsman, and the reserve quartermaster.

(Testimony of Syunzi Sato.)

Q. What did you do after the vessel entered the fog at 7:03?

A. I stood lookout and then attended to the maneuvers of the ship.

Q. Did you stand in one position all the time before the barge was sighted?

A. No; I moved about.

Q. Are the wings of the bridge of the "Sakito" open?

A. Yes; they are open.

Q. Did you go out on the open wings some of the time?

A. Yes; I went to both wings and also on the inside.

Q. What did the first officer do after the vessel encountered the fog?

A. He did the same thing that I was doing. [842]

Q. What did the apprentice officer do?

A. He was acting as lookout and blowing the fog signal, that is about all.

Q. Did he make any entries in the memo pad?

A. Yes; when he gave the engine signals or something like that.

Q. What did the relief quartermaster do?

A. Oh, he was cleaning.

Q. Where was the other quartermaster?

A. He was tending to the wheel, at the wheel all the time.

Q. Was there anyone on the forecastle head after the vessel entered fog at 7:03?

(Testimony of Syunzi Sato.)

A. There was a lookout there, a sailor.

Q. Do you remember his name?

A. Shimada.

Q. Was he an "AB" sailor, an able-bodied sailor?

A. Yes.

Q. Did you see him go out to the bow and stand lookout?

A. Yes; I did.

Q. At what time?

A. About a minute after, about 7:04, about that time.

Q. Was anyone else out on the forecastle head after he went out there?

A. Yes. As soon as the fog signal is given somebody stands lookout there. [843]

Q. Was there somebody out there before Shimada arrived there?

A. Yes; just a little before that.

Q. Do you remember who that was?

A. He is an apprentice sailor by the name of Yokoyama.

Q. Did he stand lookout at the bow until Shimada arrived there?

A. Yes.

Q. And Shimada relieved him at the bow?

A. Yes.

Q. Did Yokoyama remain on the forecastle head after Shimada arrived?

A. No; he was not standing there.

Mr. Cluff: What is the answer, please?

Mr. Adams: He was not standing there.

Q. Did you see what Yokohama did after Shi-

(Testimony of Syunzi Sato.)

mada arrived? Did you see what Yokoyama did after Shimada arrived?

A. No; I don't know.

Q. I am referring now to a photograph which is an exhibit attached to the deposition of T. Yokota, and marked Yokota's Exhibit No. 4. Captain Sato, is that a photograph of the forward deck of the "Sakito Maru"? A. Yes; it is.

Q. Is the raised portion of the vessel shown in the background of the picture the forecastle head?

A. The forecastle is from here forward. [844]

Q. To the bow? A. Yes.

The Court: You had better give the number of the photograph that you are looking at so the record will be clear on it.

Mr. Adams: Yes. I believe I did give this.

The Court: Did you?

Mr. Adams: Yes.

Q. I am referring to another photograph marked Yokota's Exhibit No. 5. Is that a picture of the forecastle head of the "Sakito Maru"?

A. Yes; it is, from here up.

Q. I am now referring to another photograph marked Yokota's Exhibit No. 6. Is that also a photograph of a portion of the forecastle head of the "Sakito Maru"?

A. This is the forward part of the forecastle head.

Q. Is that right at the foremost part of the ship?

(Testimony of Syunzi Sato.)

A. Yes; it is in the forward part of the ship. Of course, the bow is a little further ahead there.

Q. This is as far forward as a person can be?

A. Yes; that is it.

Q. There appears to be a platform or a raised landing or stage in the picture. What is that?

A. That is a platform for a person to stand on.

Q. Did you see anyone stand on that after the "Sakito" encountered fog? [845]

A. Yes; I did.

Q. Who?

A. First, was Yokoyama, that is the apprentice sailor, and then after that, Shimada, the sailor.

Q. There is also shown in this photograph a megaphone, is that correct?

A. That is correct.

Q. Did Shimada later use that megaphone?

A. Yes; he did.

Q. I show you another photograph, Yokota's Exhibit No. 7. Is that another picture of the same platform that we have been speaking about?

A. Yes; that is the platform. According to that picture it is the same thing, same spot. I think so.

Q. Are those pictures a fair representation of the bow of the "Sakito Maru" at that time?

A. Yes.

Mr. Adams: If the court please, we have this afternoon been arranging that bond that I spoke of earlier, and it is necessary for the Captain to go up there for about five minutes, as I understand

(Testimony of Syunzi Sato.)

it, in order to sign some papers or something; and then he is free from their custody and can return. Their office closes at 4:30 and they were very anxious that he get up there before that time. Otherwise——

The Court: We will run to 4:15 and I will give you a break. [846]

Mr. Adams: Fine, thank you.

Q. Captain Sato, what was the first notice that you received of anything ahead as the "Sakito Maru" proceeded in fog that morning?

A. 7:09.

Q. What happened then?

A. I got a notice from Shimada, the lookout there, that he saw something ahead.

Q. What did Shimada say?

A. He said he could see a boat ahead, and that is why he blew the whistle—the megaphone, through the megaphone.

Q. Did he shout that through the megaphone?

A. Yes; a loud voice.

Q. What time was that? A. 7:09.

Q. Did Captain Sato see anything?

A. Yes; I saw the boat right after that.

Q. Did you immediately look after the lookout yelled that warning?

A. Right after he gave me the—told me about it.

Q. What did you see?

A. I saw a boat. [847]

Q. Well, did you see it clearly?

(Testimony of Syunzi Sato.)

A. No. No; it was in the fog. I couldn't see it very clearly.

Q. Were you able to see what kind of a boat it was?

A. No; at the first I couldn't determine what it was.

Q. Could you tell in what direction the boat was headed? A. Not in the beginning; no.

Q. At what angles was the boat lying, if you could tell, with reference to the course of the "Sakito Maru"?

A. Right angles, about.

Q. Where was the boat with reference to the stem of the "Sakito"? A. How far was it?

Q. Where was it with reference to the stem?

A. Right in front of it.

Q. Was it directly ahead?

A. I think about right in front of the bow.

Q. How far did you judge that boat to be away from the "Sakito Maru" when you first saw it?

A. About 200 meters, I think. That was my estimation. That is what I estimated.

Q. Before you heard a warning from the lookout what did you judge your visibility to be?

A. From my estimate, I think about 300 meters.

Q. Is that what you thought your visibility was before you saw the barge? [848]

A. Yes, sir; before I saw the barge I thought.

Q. What did you do after you saw the barge?

A. I gave orders for the helm, to put the helm

(Testimony of Syunzi Sato.)

hard to starboard, at the same time I stopped—gave the signal to stop the engines and then immediately full astern.

Q. Did you continue to watch the barge?

A. Yes; I was looking at it.

Q. Prior to the time that the lookout shouted had you heard a sound or signal from any other vessel? A. I didn't hear anything.

Q. After you saw the barge did you hear a signal from any other vessel? A. No; I did not.

Q. Before the collision did you hear any signal?

A. A little before the collision I heard a bell.

Q. Describe the sound of the bell that you heard.

A. I heard the bell ringing continuously.

Q. What time did you give the order hard astarboard and stop and full astern to the engines?

A. 7:09.

The Court: Gentlemen, we will stop at 7:09 or these other stopping places, so you can arrange for this man to be returned to the custody of the Immigration Department.

(An adjournment was taken to Friday, September 19, 1941, at 10 o'clock a. m.)

(Short discussion as to future procedure omitted from transcript.) [849]

Los Angeles, California,

Friday, September 19, 1941.

10 a.m.

Mr. Adams: May it please the court, the other day I called the court's attention to the fact that a new libel had recently been filed and which we had answered, but had not filed a petition under the 56 rule. Mr. Cluff agrees that we might do so. That is the libel in intervention in the suit originally filed by the Hermosa.

The Court: Who is this party?

Mr. Adams: Elliott. He is a personal injury claimant. We have one petition covering the Hermosa suit, and this libel is in intervention in that suit, and we have simply amended that one petition. Mr. Cluff has been served with a copy of the amendment.

Mr. Cluff: I haven't been served with a copy. Are we named as a party?

Mr. Velpmen: You are named in our pleadings, but we haven't served you.

Mr. Cluff: I understand we will have a reasonable time thereafter?

Mr. Velpmen: I am not going to serve it. I am doing it this way.

Mr. Cluff: It's all right with me.

Mr. Velpmen: We will get the same results, doing it this way. [850]

SYUNZI SATO

recalled.

(Record of questions and answers before adjournment read by the reporter.)

Further Direct Examination.

By Mr. Adams:

Q. Captain Sato, who executed the order on the ship's telegraph to the engine-room for the stop and full astern order? A. The chief officer.

Q. Will you explain, Captain Sato, what you mean by the term "engine-room telegraph"?

The Court: I think it is explained in one of the depositions I read. It is simply a means of communicating with the engine-room, is it not?

Mr. Adams: Yes, if the court please. There are handles on this telegraph, and they are manipulated by hand.

The Court: I think the testimony was that it communicated to the engine-room certain orders for them to execute.

Mr. Adams: Yes, and there is an arrow——

The Court: May I ask, is this the signal that they answer by a blast of the whistle?

Mr. Adams: No, the ship's telegraph has——

The Court: I mean, after they receive the signal, how do they know that the order is being executed?

Mr. Adams: The telegraph on the bridge has the speeds of the vessel on it, with arrows pointing to that speed, and [851] handles are set to corre-

(Testimony of Syunzi Sato.)

spond with the arrows pointing at the speed at which the vessel is going, or that it is desired to go. If it is going slow ahead, then they jingle the telegraph, to call attention to that, or to put it at stop, or full astern. The same process takes place on the ship's telegraph in the engine-room; that is, the arrow follows, and the engine-room answers to demonstrate that it has received the order.

The Court: How does it answer?

Mr. Adams: By jingling the telegraph.

Mr. Cluff: The telegraph operates both ways.

Mr. Black: It has a pointer that is actuated by the engine-room, that shows up on the bridge.

Mr. Adams: That is correct.

Q. Captain Sato, after you gave the order full astern, was there a signal sounded on the whistle of the "Sakito Maru"? A. Yes.

Q. What signal was sounded?

A. Three short.

Q. What did that signal indicate?

A. It indicates that the ship's engines are full astern.

Q. Did you observe the helmsman execute the order hard to starboard? A. Yes, I did.

Q. Did you continue to watch the "Olympic" as the [852] "Sakito" proceeded toward it?

A. Yes, I did.

Q. As the "Sakito" approached the "Olympic", did the "Olympic" become clear through the fog?

A. As we approached it got clearer.

(Testimony of Syunzi Sato.)

Q. Did you observe whether or not the "Sakito" responded to the rudder prior to the impact?

A. Yes, I saw it, slowly.

The Court: He said, "I saw it, slowly." What does he mean by that?

Mr. Adams: I think my next question will illustrate it.

Q. Did you observe whether the "Sakito Maru" changed her heading prior to the impact?

A. Yes, I did, just a little bit.

Q. In what direction did the heading change?

A. Starboard, about 10 degrees.

Q. About 10 degrees? A. Yes.

The Court: The court can't follow, as quickly as you gentlemen can, what you mean by starboard and port; whether it is left or right. I can't follow it as quickly as you gentlemen, who are accustomed to these things.

Mr. Adams: I think it is confusing; I admit I am confused, and I think perhaps it may better be referred to as right and left. As a matter of fact, that is a practice more commonly becoming adopted. [853]

Mr. Cluff: Starboard is always right, the way you are facing.

Q. By Mr. Adams: When you say that the heading was changed to approximately 10 degrees to starboard, you mean to the right?

A. Right.

Q. Prior to the actual impact, did you see any other boats besides the "Olympic"?

(Testimony of Syunzi Sato.)

A. I did.

Q. What did you see in that connection?

A. I saw a small boat beyond the "Olympic", a little to the left or port side.

Q. To the port side of the "Sakito"?

A. Yes.

Q. Off the port bow? A. Yes.

Q. Were you able, before the impact, to determine the bow and stern of the "Olympic"?

A. Just a little before the impact, yes.

Q. Would the "Sakito" have hit the "Olympic", if the order "hard to starboard" had not been given? A. If I had not given that order?

Q. Yes.

A. Surely, I thought that it would hit if I hadn't given that order.

Q. Why did you give the order hard to starboard? [854]

A. I gave it to the right.

The Court: You did not answer the question. Why?

Q. By Mr. Adams: Why did you desire to go to the right?

A. Because it was instantaneous, and it is the policy of the ship to always go to the right.

Q. Did you consider that as the proper maneuver, in an effort to avoid striking the barge?

A. Yes, in order to avoid hitting it.

Q. When you gave that order, did you think that

(Testimony of Syunzi Sato.)

possibly the "Sakito Maru" might clear the barge by turning to the right?

A. Yes, at that time I thought so.

Q. Did you later determine that the vessel did not have enough distance to respond to the right rudder?

Mr. Cluff: I think the questions are getting pretty leading. I had better register an objection at this time, that the questions are leading and suggestive. You are getting down to pretty important matters.

Mr. Adams: I will withdraw the last question.

Q. Do you know the turning circle of the "Sakito Maru"? A. I do.

Q. Proceeding slow ahead, as the vessel was at that time, and loaded as she was, about how far would the vessel travel in the direction she was going prior to the hard right order?

Mr. Cluff: May I ask a question on voir dire? [855]

Mr. Adams: I hadn't finished my question.

The Court: Let him finish the question.

Mr. Adams: May I have the question?

(Question read by the reporter.)

Q. By Mr. Adams: I will reframe that question. Traveling at the speed that the "Sakito Maru" was, at the time the barge was sighted, how far would the "Sakito" travel before she responded to the hard right rudder?

(Testimony of Syunzi Sato.)

Mr. Cluff: Before that question is answered may I ask a couple of questions on voir dire?

Mr. Adams: It hasn't been yet translated to the witness.

The Court: Let him finish.

Mr. Adams: If the court please, the witness is entitled to hear the question.

(Question read by the reporter.)

Mr. Cluff: May I ask my questions?

The Court: I can't see the purpose of asking questions at this time.

Mr. Cluff: May I state that?

The Court: Yes.

Mr. Cluff: The witness says that he knows the turning curves. I want to know whether they have been posted; whether they are the result of posted computations by a naval architect, or simply observations. If they are posted computations, the witness's statement as to how far she would turn, is not the best evidence, and if his knowledge [856] is based upon computations, we are entitled to those computations.

The Court: It would seem to me that the master of a vessel would know, from practical experience, the maneuverability of his vessel.

Mr. Cluff: Possibly so; but if there are computations made by a naval architect that is the very best evidence you can get of the turning circle.

The Court: You may ask him.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain Sato, you say that you know the turning curve of the "Sakito Maru"?

A. Yes.

Q. Did you determine that curve from maps or blueprints made by naval architects?

A. No, I didn't compute them from naval architects' charts, but at the time that the ship was tried, when she first took the water, I computed it from that.

Q. When she was tried on her trial trip, she was handled, navigated and maneuvered about, and then her turning curves were established and posted?

A. Yes. [857]

Q. And you would have those plots on the ship?

A. Yes, I have.

Q. And those show her turning curve at various speeds? A. Yes.

Mr. Cluff: Then I object to the witness answering the question on the ground that his statement is not the best evidence of the ship's turning curve.

Mr. Adams: If the court please, computations made after a test of that character is certainly a written record of the judgment of the person making the test.

The Court: If the witness knows, I am going to let him answer. May I ask, is this evidence available?

Mr. Adams: No, it is aboard the ship. It certainly is not a matter of major importance. I am only endeavoring to demonstrate that a ship is not

(Testimony of Syunzi Sato.)

like an automobile; that you just can't turn it around on a dime; and I am not endeavoring to work out any minute matters.

The Court: This court is very much interested in the maneuverability of the vessel. I think it is very material, and I think the best evidence available should be produced. At the same time, it does not seem to me that the master of a ship, operating it—that anybody would know any more about it than he would.

Mr. Adams: That is true.

The Court: You may proceed with the questions. I am going to admit it. [858]

The Interpreter: Do you want me to ask him?

Mr. Adams: Yes, if he understands the question.

A. After I gave the order, it went about 60 or 70 meters before she answered.

Mr. Cluff: To which we object upon the ground that it is not responsive. He is asked how far she would go according to her turning curves, loaded as she was at that time.

A. After, 60 or 70 meters.

The Court: Do you mean by that that it would start to take effect—that it would have moved 60 or 70 meters before the boat actually commenced to curve?

Mr. Adams: Yes. The vessel, even after the hard right rudder order was executed, will proceed on her previous course before the rudder takes, and a response if felt.

(Testimony of Syunzi Sato.)

Mr. Cluff: Mr. Adams, may I ask if you have the posting of the vessel's turning curves available here?

Mr. Adams: We have not.

Mr. Cluff: Do you know where they are?

Mr. Adams: Probably aboard the vessel. I can ask the Captain. We were never asked for them and they never seemed to be of any great materiality.

Mr. Cluff: Do you remember the chief officer was asked for them, on his deposition?

Mr. Adams: I do not recall that he was.

Mr. Cluff: Anyhow, they are not available in Los [859] Angeles?

Mr. Adams: No, they are probably aboard the vessel, wherever the vessel is; I don't know; probably in Japan.

The Court: He said 60 or 70 meters.

A. Yes, before a response is felt.

Mr. Cluff: I will put that into feet. About 190 feet. Three and a quarter feet to a meter.

Mr. Adams: If the court please, I have worked out, for my own convenience, and I have some copies here of meters translated into yards and feet, which might serve to illustrate, because we always think in terms of yards and feet, and it might be helpful to the court.

A. Where did the stem of the "Sakito" strike the "Olympic"?

A. The port side; the left side of the "Olympic".

(Testimony of Syunzi Sato.)

Q. Where, with reference to the bow and stern of the "Olympic"?

A. I couldn't give you anything definite; about the middle.

Q. Prior to the time the "Sakito" struck the "Olympic", did you observe anything to indicate that your engines and propellers were going astern?

A. Yes.

Q. What did you observe to indicate that?

A. If it goes full astern there is a vibration in the ship. [860]

Q. Did you observe that before the collision?

A. Yes, I know that definitely.

Q. Do you believe that before the collision the speed of the "Sakito" was reduced?

A. Yes, I do. I did know that then.

Mr. Cluff: May I have the question and answer?

(Record read by the reporter.)

Q. By Mr. Adams: How fast do you think the "Sakito" was going at the time of the actual impact? A. When it was hit?

Q. When it was hit.

A. I think about a mile or a mile and a quarter—I mean knots.

Q. How far did the "Sakito" travel forward after hitting the barge?

A. I couldn't give you anything definite, but I think about 20 or 30 meters.

(Testimony of Syunzi Sato.)

Q. Do you believe that the propellers were going astern at the time of the impact? A. Yes.

Q. At what time, according to the "Sakito's" time, did the collision occur? A. 7:10½

Q. What was the practice aboard the "Sakito" with respect to logging the time, when any event occurs, between minutes? [861]

A. The usual way is that we recorded by minutes, but this time it was very dangerous, so we took that in a half minute record.

Q. When an event does not occur exactly on the minute, but occurs, let us say, 20 seconds after the minute, at what time do you usually log it?

A. In a case like that we figure it one minute.

Q. If an event occurs at, let us say, 9:10 and 20 seconds, what time would you log it in the log book?

A. Usually, in the usual way, 10 minutes—9:10.

Q. That would be the nearest minute?

A. Yes, the closest to the minute.

Q. Supposing an event occurred at 9:10 and 40 seconds, how would you log it in the log book?

A. 9:11.

Q. Why did you not log the time of the collision in that manner, on this occasion?

A. Because that was a very important time, and in order to let it be known that it was a little before 7:11; that was the reason why we recorded it that way.

Q. Is that the only event that was timed and logged in that manner?

(Testimony of Syunzi Sato.)

A. Only on that ship yes, I have that experience.

Q. I mean this was the usual practice followed, which you have just described, with respect to timing and logging of the other events? [862]

A. I don't understand you.

The Court: I presume that seconds are important here in figuring speeds and time, and everything, and I would be interested to find out whether or not he gave any direction as to the insertion of 10 $\frac{1}{2}$ —how they came to not follow the usual custom; whether he gave any instructions on it.

Q. By Mr. Adams: Captain Sato, did you instruct anyone to enter the time of the collision at 7:10 $\frac{1}{2}$, or did someone act upon his own initiative and do that? A. It was my order.

Q. To whom?

A. I gave the orders to the chief officer and the apprentice officer recorded it.

The Court: I would like to ask a question or two: How did you determine that it was 7:10 $\frac{1}{2}$?

A. The apprentice officer was looking at his watch, and I determined it by that.

Q. Did you see his watch?

A. No, I didn't see any watch at that time.

Q. What was the order that you gave?

A. I told him afterward that he should insert it in that manner.

Q. Was there any memorandum made fixing the time by the watch at actually 7:10 $\frac{1}{2}$, or was it 7:10—50—20, or what? [863]

(Testimony of Syunzi Sato.)

A. At that time I couldn't give you the exact time to the last second, because it is a watch with a big dial on it.

Mr. Cluff: May I suggest a question, Mr. Bischof? When you take the word "watch", is there a distinction in Japanese between watch and clock?

The Interpreter: "Tokei" is watch or clock.

Mr. Cluff: He says the first officer's watch. I was wondering whether it was a pocket watch, or the bridge clock.

A. That is the bridge clock.

Mr. Cluff: So when you translate "watch" it means clock as we would understand it, rather than a pocket watch? A. The clock.

Q. By Mr. Adams: Where in the wheelhouse was the clock located?

A. On the bulkhead on the starboard side.

Q. Near the forward bulkhead?

A. A little back of the middle.

Q. After the impact did you give any orders to the engine room? A. I did.

Q. At what time, and what order?

A. I gave an order to stop at 7:11.

Q. Do you know for sure that that order was given after the impact?

A. Yes, I know that definitely. [864]

The Court: What time was it, does the evidence show, that the boat actually went under?

Mr. Adams: According to the "Sakito's" time——

(Testimony of Syunzi Sato.)

The Court: They are the only ones that have any time?

Mr. Adams: Yes—I believe it was 7:14. I wouldn't be certain.

Q. Where was the stem of the "Sakito" with reference to the "Olympic", when you gave the order stop at 7:11?

A. I couldn't give you anything positive, but I think it was at a point 20 meters forward.

The Court: Read the question and answer.

(Record read by the reporter.)

The Court: What does that mean?

Mr. Adams: I don't know.

A. He means after he gave the order at 7:11 to stop.

Mr. Adams: No, withdraw the question. At 7:11, when you gave the order stop, where was the "Sakito" with reference to the "Olympic"?

A. It was touching the "Olympic".

Q. Had the stem of the "Sakito" stove in the port side of the "Olympic" at that time?

A. That was rather instantaneous at that time, and it was just about the time it hit.

Mr. Cluff: I object to the answer as not responsive. It doesn't seem to me that it bears any relation to the question. [865]

The Court: It doesn't mean anything.

Mr. Adams: Read the last question again, please.

(Question read by the reporter.)

A. Yes.

(Testimony of Syunzi Sato.)

Q. At the time you gave the order "Stop engines" at 7:11, was the "Sakito" still making headway? A. About stopped.

Q. About stopped?

A. It had stopped.

Q. It had stopped?

A. I observed that it had about stopped.

Q. About how long do you believe it would take, after that order was executed by the engine room, to stop the engines, for the propellers to stop turning in the reverse direction?

A. After the engines are stopped the propellers would be turning around.

The Court: For how long?

Q. By Mr. Adams: For how long?

A. 10 seconds.

Q. After the stop order at 7:11, did the "Sakito" continue to remain in the hole made in the "Olympic's" side?

A. After I gave the order to stop, it was not any time at all it separated.

Q. What separated? A. Both ships. [866]

Q. Do you mean that the stem of the "Sakito" separated from the "Olympic"?

A. I don't mean that it absolutely separated from the "Olympic". What I mean by that is, after the stem was completely into the "Olympic", it just separated a little from that.

Q. At what time did you next give an order to the engine room? A. 7:13. [867]

(Testimony of Syunzi Sato.)

Q. Where was the stem of the "Sakito" with reference to the port side of the "Olympic" at that time?

A. It was separated about 10 meters from the "Olympic".

Q. And what order did you give at 7:13?

A. Full astern.

Q. When you gave that order "full astern" at 7:13,—are you sure that the stem of the "Sakito" was away from the "Olympic"?

A. Yes, it was.

Q. Why did you give the order "full astern" at 7:13?

A. In order to drop the anchor after we had gotten away from the "Olympic".

Q. What, in your opinion, would have happened if you put the engines ahead at 7:13, instead of astern, not full ahead.

(Question read by the reporter.)

A. If I had given the order of ahead at that time, in my opinion, I would have had the same thing happen. In other words, if I had given the order of "full ahead", I would have had another collision.

Q. Do you think that if you put the engines ahead, you would have been able to fit the stem of the "Sakito" right in the hole that was already made in her side?

A. I absolutely couldn't do that.

(Testimony of Syunzi Sato.)

Q. What would have been the effect if the "Sakito" by moving had struck the "Olympic" again?

A. It would cause more damage. [868]

Q. After the "Sakito" hit the "Olympic", was the "Olympic" shoved through the water any distance?

A. Yes, it did move a little.

Q. Did all parts of the "Olympic" move the same distance, or did the bow or stern of the "Olympic" move further than the other?

A. No, the stern moved more, of the "Olympic"; the stern of the "Olympic" moved more.

Q. Do you believe that the stern of the "Olympic" swung more than the bow?

A. Yes, I do.

Q. What did you do after giving the order "full astern", at 7:13?

The Court: Gentlemen, isn't there enough evidence on that? We have the other evidence here that they backed up and anchored. There isn't any point of going into that in detail, is there?

Mr. Cluff: It might be important to find out just how far from the point of collision they came at anchor.

The Court: Why is it important?

Mr. Cluff: It tends to fix the position of anchorage.

Mr. Adams: I don't know how important that would be.

Mr. Cluff: If you don't ask him, I will.

The Court: What I mean is this: The evidence

(Testimony of Syunzi Sato.)

is in as to the boat, and the fog, and whether they backed up a quarter of a mile or half a mile, one wouldn't be any more at [869] fault than the other.

Mr. Adams: The reason I want to cover it is, if there is a charge on the part of a libelant with respect to the maneuvers of the "Sakito", after the collision, I want the right to go into it.

The Court: Unless somebody calls something to my attention, I wouldn't be impressed by that as a fault, because there were other boats there, able to pick up the survivors. They would not have had time to lower their boats, and could not *have* done any more than those already there, so I can't see where that would help the situation.

Mr. Adams: There are, of course, a great many wild charges made in this respect, and I might call the Court's attention to——

The Court: So far as I am concerned, after listening to the plaintiff's case and their evidence—that's the reason I tried to stop you, unless it is essential for fixing exact spots, so far as measurements are concerned, but the evidence here is that they backed up a considerable distance, and in due time put down their life boat, and went out there. If there had not been any other boats around there to save the survivors, and they maneuvered to that distance, it might be another question. But there were plenty of boats there, and available, and there was no loss of life by the failure on their part to get life boats out quicker than they did.

(Testimony of Syunzi Sato.)

Mr. Montgomery: There is nothing to show whether there [870] were other boats or not.

The Court: They were there, and it was not the failure of them to have boats there.

Mr. Montgomery: It is their conduct all the way through. If they didn't stand by and render aid, the law is that they are negligent.

Mr. Adams: I appreciate the Court's position, and I realize that I am imposing upon the Court's time, but I want the right to answer such charges as Judge Montgomery has just made.

The Court: We can't take up the Court's time to answer everybody's charges back and forth. As I stated before, the evidence is clear that these other boats were there, and were immediately on the spot, and were there much quicker than it would have been possible to have gotten a life boat from the "Sakito Maru" out there, no matter where they anchored. It presents a different question than the withdrawal of this boat, or whether it did withdraw from the "Olympic II", and whether or not by maintaining its position it could have held the "Olympic II" up, even a minute or two longer. Probably, if it had been able to hold the "Olympic" up a couple of minutes longer, there would have been no loss of life, because seconds counted at that time. Whether or not that had anything to do with it, that is a different question; but I can't see whether they rendered aid or not—they could not have rendered any more than was already available. That is the way I look at it. [871]

(Testimony of Syunzi Sato.)

Mr. Adams: The Court is talking in terms of proximate cause. In other words, even if they did not lower a life boat and render any aid, it could not have caused the tragedy which resulted. I simply wanted to demonstrate that there was no fault.

The Court: We are not trying a libel case, gentlemen.

Mr. Adams: No, but there have been so many charges made about their failure to render aid, it is of vital importance.

The Court: Then cover it hurriedly.

(Short recess.) [872]

Q. By Mr. Adams: Captain Sato, in referring to the times which I will ask you, if you do not recollect the times exactly, you may refresh your memory from the log book which I have just placed before you.

Mr. Cluff: Just a moment. That is the smooth log you are giving him?

Mr. Adams: That is the smooth log.

Mr. Cluff: That is not the book with the written memo pad?

Mr. Adams: Well, let us have the memo pad then.

The Court: Wait a minute. Is the book kept in the regular course of the operation of the boat?

Mr. Adams: Yes.

The Court: Why isn't it admissible under that provision of the judicial code?

(Testimony of Syunzi Sato.)

Mr. Adams: I never heard that they weren't, your Honor.

Mr. Cluff: The evidence in this case is that on the Japanese ships, as in all ships, they have a rough log—that is what they call it—on the bridge, and enter up things as they occur. The smooth log is written up after the watch is over, and the evidence in this case is that it was written up in the afternoon after the collision. They are both the same.

Mr. Adams: That is right; they are both the same.

Q. I show you a slip of paper, Captain Sato, and ask you if that is the deck memo pad which was kept by the apprentice officer during these events? [873] A. Yes, they are.

Q. Now, if the times which I asked you about are not clear in your recollection you may refer to the deck memo pad and refresh your memory. What was the next order to the engine room after the order "full astern" at 7:13?

Will you instruct him, please, to refer to that memo pad? There has been an objection to the smooth log.

A. 7:14, "stop starboard engine."

Q. What was the next order?

A. 7:15, "stop port engine."

Q. At what time was the anchor let go?

A. 7:19—7:17.

Q. When were preparations made to let go of the anchor commenced?

(Testimony of Syunzi Sato.)

A. Immediately after; no time at all after the collision.

Q. What orders did you give in that connection?

A. I told the chief officer to make arrangements to drop the anchor.

Q. When did you do that?

A. Soon after the impact.

Q. After the anchor was dropped at 7:17 were any further orders given to the engine room?

A. Yes; I did.

Q. What orders?

A. At 7:18, "slow ahead."

Q. What was the purpose? [874]

A. Because at that time the ship had a stern way and in order to stop that immediately.

Q. In other words, you put the engine "slow ahead" to check the stern way? A. Yes.

Q. What was the next order to the engine room?

A. 7:19, "stop."

Q. When was the life boat lowered into the water? A. 7:20.

Q. When were preparations commenced to lower the life boat into the water?

A. Immediately after the impact they were making the arrangements, preparations.

Q. Why did you wait until the motion of the vessel had stopped before you lowered the life boat?

A. The ship is going astern, it is very hard to lower a life boat at that time.

(Testimony of Syunzi Sato.)

Q. You mean because when the ship is in motion it is hard to lower a life boat into the water?

A. Yes; it is very hard.

Q. What did the life boat do after it was lowered into the water at 7:20?

A. It went to the point where the "Olympic" had gone down.

Q. How long did it remain in that area?

A. Two hours. [875]

Q. Returned to the ship at what time?

A. About 9:15 or 9:20.

Q. Did you observe the barge sink?

A. I did.

Q. Did you note the time that the barge sank?

A. I did not see the time definitely.

Q. Did the apprentice officer make an entry in the log book concerning the time the barge sank?

A. Yes.

Q. Was that made in the regular course of his duties? A. Yes.

Q. Please refer to your log book and tell us what time is entered there showing when the barge sank?

Mr. Cluff: May the record show that the witness is looking at the smooth log and not at the deck memorandum?

Mr. Adams: It may, so far as I am concerned.

A. 7:14.

Q. Captain Sato, after the lookout at the bow shouted the warning that the ship was ahead what did the lookout do, if you noticed?

(Testimony of Syunzi Sato.)

A. You mean after he gave the order that there was a ship ahead?

Q. After he shouted the warning.

A. You mean what did the lookout do?

Q. Yes.

A. He still kept on looking. [876]

Q. How long did he remain there?

A. Just a little before the impact.

Q. Then what did he do?

A. He got down from the forecastle onto the lower deck.

Q. Did he run?

A. Yes; he did run a little.

Q. Did he shout?

A. No; I did not hear any shouting.

Q. Did he wave his arms?

A. I don't remember seeing that.

Q. He left the immediate bow just before the impact?

A. Yes; just before the impact he came away from there.

Q. Did you observe whether any other sailors were on the forecastle head or on the fore deck after the barge was sighted?

A. After they saw the barge?

Q. Were any other sailors on the forecastle head?

A. I don't think there were on the forecastle.

Q. Were there any on the well deck?

A. I think there was about one there.

Q. Did you observe what he did right about the time of the collision?

(Testimony of Syunzi Sato.)

A. The ship was approaching and he had stuck his head out and was looking.

Q. When the "Sakito" is headed as she was at that time and proceeding at the slow speed that she was at that time [877] within what distance can the "Sakito" be brought to a stop by putting the engines full astern?

The Interpreter: What was the last of that question?

(Question read by the reporter.)

A. About one and a half or two lengths of the ship, I think.

Q. What, in your opinion, caused the stem of the "Sakito Maru" to separate from the "Olympic"? A. You mean after it hit?

Q. Yes.

A. My ship had stopped and from the impact of my ship on the barge caused it, caused the barge to move and that was the reason I separated. On account of that inertia the other ship would naturally go forward a little bit, still go forward.

Q. In other words, you think that the momentum on the part of the "Olympic" caused by your ship striking that "Olympic" had not ceased when your ship was checked? A. Yes; I think so.

Q. How high above the surface of the water was the bridge of the "Sakito", loaded as she was at that time? A. 52 or 3 feet.

Q. How high above the surface of the water was the deck of the forecastle head at the immediate bow,

(Testimony of Syunzi Sato.)

headed as the vessel was at that time?

A. About 33 or 4 feet.

Q. At the immediate bow of the "Sakito" is there a rail [878] or a bulwark?

A. There is a bulwark.

Q. Is that a solid bulwark?

A. Solid, steel plate.

Q. Does that extend aft to the break in the fore-castle head?

A. No. Up to a certain point only.

Q. Almost to the after end of the fore-castle head?

A. No; not that much.

Q. How high is that bulwark at the immediate bow?

A. About five feet.

Q. How high is the platform on which the look-out stood?

A. I think about a foot and a half.

Q. How far back from the stem of the "Sakito" must a person stand in order to stand on that platform?

A. You mean from the point where they stand on the platform to the immediate head of the stem of the boat?

Q. Yes.

A. Two or three feet.

Q. Is Shimada taller or shorter than you?

A. About the same.

Q. How tall are you?

A. Five foot three.

Q. How much does one of your anchors weigh?

A. I am not positive, but around four tons.

Q. Can you drag that anchor when your engines are going [879] full ahead?

(Testimony of Syunzi Sato.)

A. It depends on the length of the chain.

Q. Will you explain what you mean by that?

A. If the chain was short, why, it would be able to drag it. If it is over thirty fathoms you cannot drag it. If it is more than thirty fathoms it cannot drag it.

Q. Assume that the bow anchor of the "Olympic" weighed 6000 pounds and that the chain running from the bow of the "Olympic" to the anchor was 630 feet and that it was a $2\frac{1}{4}$ -inch chain; do you think that the "Sakito", after striking the "Olympic", could have caused the bow anchor to be dragged?

The Interpreter: I have to get that question.

(Question being read.)

Mr. Cluff: Just a moment, Mr. Bischof. To which we object upon the grounds it is incompetent, irrelevant and immaterial and no foundation laid. There is no evidence as to the holding ground, there is no evidence that the witness knew anything about the structure of the "Olympic" or the kind of anchor. It is entirely speculative. It is just simply like anybody making a guess.

The Court: I have been trying to follow it. I would like to have counsel state the materiality.

Mr. Adams: The materiality, if the Court please, is to demonstrate that since the stern anchor of the "Olympic" was severed, and since the bow anchor was not severed, that the bow anchor was not

(Testimony of Syunzi Sato.)

dragged and that the stern of the "Olympic" [880] swung in an arc.

Mr. Cluff: How can he tell whether the bow anchor was dragged or not?

Mr. Adams: I am asking him, in his opinion, whether he thought the "Sakito", after hitting the "Olympic", could have dragged the bow anchor. It is expert testimony.

Mr. Cluff: He may have experience, of course, but no seaman is omniscient. Unless he can tell what sort of holding grounds they had under that anchor, whether it was stock or navy anchor. I don't see how anybody could conceivably give any testimony of value on the subject. That anchor might have been buried nine feet deep in the mud if it happened to be muddy bottom there. I don't know.

The Court: Well, I am going to admit it for what it is worth, and I don't think it is worth much.

Mr. Adams: Read the question, please, to the witness.

(Question read by the reporter.)

A. I don't think that that would be possible. I don't think it could be done.

Mr. Adams: Now, if the Court please, as I have previously indicated yesterday, Mr. Bischof has to leave, and I have arranged for other witnesses to be here at 11:30. I don't know whether he is here yet or not.

Could you continue, Mr. Bischof, for a few moments?

(Testimony of Syunzi Sato.)

The Interpreter: Yes, sure.

Q. By Mr. Adams: Now, Captain Sato, I show you a roll of [881] graph paper and ask you what this is?

A. That is the ship's course record.

Q. Is that the course recorder which is connected with the gyro compass? A. Yes.

Q. Will you interpret this record for us, Captain Sato, and tell us what this continuous red line which is on a line of the graph paper marked "340" indicates?

A. That is the ship's course in that distance.

Q. And what does that indicate that the ship's course was? A. True 340 degrees course.

Q. That line is zigzagged. Can you explain why it is that way?

A. It depends on the helm, shaking of the helm or the wind and tide, and, naturally, the stem of the ship is always moving back and forth.

The Court: And that, following a 340 true, that means that according to the graph it was traveling 340 true, does it not?

Mr. Adams: Yes, and according to the gyro compass.

The Court: And the compass.

Mr. Adams: Yes.

The Court: But the checkup showed that it was not actually; in other words, they had to adjust it because of the shifting of the boat from one point to another; that is—— [882]

(Testimony of Syunzi Sato.)

Mr. Adams: If the Court will conceive the course to be a heading——

The Court: I know, but what I am getting at, for instance, this map that shows indicates different places that they have taken their bearings——

Mr. Adams: Yes.

The Court: ——and found that they were off their course.

Mr. Adams: No; I disagree with the Court's interpretation. They were not off their course.

Mr. Cluff: I think he is right, Judge. Let's see if I can't make it clear.

The Court: Just a minute. Let me have this last map so I can understand it.

Mr. Adams: What I was going to ask——

The Court: Well, go ahead, gentlemen. Go ahead.

Mr. Adams: I was just going to make this statement: If the Court will conceive a course to indicate heading.

The Court: Yes; I understand that.

Mr. Adams: Then the heading was constant 340 degrees true.

The Court: Yes.

Mr. Adams: Now, the vessel did not necessarily actually travel in a straight line because of the effects of wind, current, tide, the normal slight errors in navigation, and many other factors that maybe other counsel can suggest.

Mr. Cluff: I think maybe you misled the Court a little, [883] Mr. Adams, by saying that——

(Testimony of Syunzi Sato.)

The Court: Where is that map we had yesterday?

Mr. Black: I think maybe I could explain it.

The Court: Where is the big map?

The Clerk: Mr. Adams has that.

The Court: I want that map we had yesterday. Was that in evidence?

Mr. Cluff: That is in evidence; yes.

Mr. Adams: No; it was not introduced yesterday. We introduced it with the deposition of the chief officer and we were allowed to retain it in our possession. I hadn't offered it yesterday. May we have this marked now? [This was marked at the time of the deposition as Yokota's—

Mr. Cluff: Yokota's 1 in evidence.

Mr. Adams: Yokota's 1 in evidence.

The Court: Now, as I understand it, that this line goes straight through is the line that they had charted for their trip?

Mr. Adams: That is correct.

The Court: And that when they got to this point which is marked "5:58" they found that they were off the line that distance?

Mr. Cluff: Yes, sir.

Mr. Adams: That they had drifted over that distance.

The Court: All right. Where does the drift show on this graph? [884]

Mr. Adams: It won't.

Mr. Cluff: It won't. You see, the ship is still on

(Testimony of Syunzi Sato.)

her heading of the 340 shown. She has her actual heading. This is the theoretical course. Actually, the ship moved enough over this way and came back again, but always on a 340 heading.

The Court: That is what I thought.

Mr. Cluff: Just simply that the course is not made good because of the sidewise drift, or for one reason or another.

Q. By Mr. Adams: Captain Sato, this graph or record purports to show only the heading of the vessel at any given time, does it not?

A. The time and the heading.

Q. Where is the time shown on the graph?

A. (Indicating): That is the time right there, 1, 2, 3, o'clock, 5, 6, 7.

Q. Between each number designating an hour——

The Court: There are ten-minute periods. He testified in his deposition.

Q. By Mr. Adams: ——there are ten-minute periods, are there not, Captain? A. Yes.

Q. According to this graph, how long did the vessel continue after 7 o'clock to proceed on a course of 340 degrees true?

Mr. Cluff: Well, just a moment. To which we object upon [885] the ground that the graph speaks for itself. It is just a matter of interpretation of the graph.

Mr. Adams: This is interpretation.

The Court: It shows 7:10, doesn't it?

(Testimony of Syunzi Sato.)

A. 7:09.

Mr. Montgomery: It is a little behind here.

Mr. Cluff: If you look at that with a glass, why
7:09. A. 7:09.

Mr. Adams: Does the reporter have the answer
of the witness?

The Reporter: I have "7:09".

Q. Captain Sato, what does the graph show was
the heading of the vessel after 7:09?

A. It is the right starboard, the ship.

The Court: The what?

A. The record doesn't show that the ship went
to the right.

Q. The pen, however, on this graph, moves to
the left? A. Yes; but the opposite.

Q. Yes; I see. The change of the heading of the
vessel is to the right, but this graph records it for
its own purposes by a line to the left?

A. That is right.

Q. By the Court: It went both ways, didn't it?
Just a moment.

A. This is the 340-degree true course. [886]

Q. By Mr. Adams: And how far——

A. And this degree is 350 degrees.

Q. How many degrees to the right does the graph
show the heading of the vessel changed at about
7:09? A. After 7:09, about 10 degrees.

Q. During what period?

The Court: Now, may I ask, does that mean that
the vessel actually moved, or she was set for that?

(Testimony of Syunzi Sato.)

Mr. Cluff: It means that her head actually swung.

The Court: What?

Mr. Cluff: It means that her head actually swung to the right by the number of degrees indicated by the graph, that is, the physical structure of the ship swung. In other words, that the heading swung ten degrees.

Mr. Adams: I don't know whether I asked this question:

Q. Over what period of time does this graph indicate that the change of heading of 10 degrees took place? A. Between 7:09 and 7:11.

The Court: How does that show on the graph?

Q. By Mr. Adams: Will you demonstrate how that shows?

A. That indicates 7:11, and before she turned, at 7:09.

Q. What period of time is covered by this line running from 340 to 350?

A. A little over a minute.

Q. Now, there is another line which immediately follows, running from 350 over a little beyond 320. What does that line indicate with reference to the heading of the vessel? [887]

A. It was after the ship had stopped and the collision, and then the bow went to the left.

Q. The heading changed to the left?

A. Yes.

Q. How many degrees?

(Testimony of Syunzi Sato.)

A. About 30 degrees.

Q. What do you believe caused the heading to change about 30 degrees to the left after the collision?

A. On account of after the collision the stern swung more than the bow.

Q. The stern of what?

A. The "Olympic"—pardon me. And in addition, the sternway of the port engine was more than the starboard engine; and also the tide, the force of the tide.

Mr. Adams: Although I dislike interrupting this, I wanted to keep my promise to Mr. Bischof.

The Interpreter: That is all right, go ahead.

The Court: How soon do you have to be there?

The Interpreter: Between 12:00 and 2:00. I think I can make it.

Mr. Adams: I have another witness I can put right on.

The Court: Is he a short witness?

Mr. Adams: Yes.

The Court: Except I want to try and get as much with this witness in my head at one place.

The Interpreter: You go right ahead. [888]

Mr. Adams: I am sorry. It will only occur at this time, if the court please.

The Interpreter: You go right ahead.

Mr. Adams: Well, I have told this witness that I would put him on.

The Court: The only thing, I would prefer to go

(Testimony of Syunzi Sato.)

ahead if possible, because it keeps some continuity in my mind.

Mr. Adams: Could we, if the court please, take about 5 minutes with this witness after 12:00?

The Court: We will take it at 5 minutes to 12:00 if it will only take about 5 minutes.

Mr. Adams: Yes; I think it will only take about 5 minutes. Now, what was my last question?

(Record read by the reporter.)

Q. What do you mean about the stern force of the starboard engine being more than the stern force of the port engine?

A. The revolutions were more.

Q. Is that shown in the engine room log?

A. Yes.

Q. Can you by referring to the engine room log indicate what you mean by that? A. I can.

Q. Please do so.

A. That is the revolutions of—the record of the revolutions at 7:09, both engines. [889]

Q. May I get that just a minute, please? You are pointing now to an entry which shows the recorded revolutions of both the port and starboard engine at 7:09, is that correct? A. Yes.

Q. Do you have a record now of the recorded total revolutions on those two engines at 7:11?

A. Right there.

Q. How many revolutions did the port engine turn during that interval of time between 7:09 and 7:11? A. About 150—exactly 150.

(Testimony of Syunzi Sato.)

Q. How many revolutions did the starboard engine turn during that period? A. 120.

Q. Now, you believe that that change in revolutions had what effect on the heading of the vessel?

A. That was the one reason the port went—the bow went to port.

Q. In other words, that was one of the contributing factors to account for this change of heading shown on this graph by a line from 350 to a little beyond 320, is that correct?

A. Not for that reason. As I already explained to you, as I have already explained to you, the reason of that change was caused by all of those factors.

The Court: Is that the result of his order? [890]

Mr. Adams: Well, no. They don't execute the same—they can't execute the order on both engines simultaneously.

The Court: No. What I am getting at is this: The change, the degree change there, starting at 7:09, was that the——

Mr. Adams: Yes; that was the hard starboard.

The Court: I understand that was completed in a minute or less than a minute, wasn't it?

Mr. Adams: Well, just about, as nearly as we can compute it here.

The Court: Yes.

Mr. Adams: I believe he testified that it shows that the heading was changed during the course of about a minute.

(Testimony of Syunzi Sato.)

Mr. Cluff: It looks to me like a good minute and a half, but that is a matter of interpretation.

Mr. Adams: One would have to be very——

Mr. Cluff: I had it photostated and I tried to draw the thing up that size, but the pen is so wide that in the photostat it shows a line like that and it is very hard to figure.

The Court: Well, a very short time, anyhow?

Mr. Adams: Yes; that is correct.

Q. We have explained, have we, Captain Sato, what caused the change of heading from 350 to a little beyond 320?

A. As I have already explained to you, to your first [891] question.

Q. Then, the next change of heading shown on the graph is from about 319, I take it, over to 330. That indicates, does it not, a change in heading to the right of about 10 degrees?

A. How many degrees?

Q. 10. A. Yes. Yes.

Q. How do you account for that change?

A. The ship had absolutely stopped, and that must have been for the reason of the tide or the wind.

Q. Where was the ship stopped?

The Court: Where on that does it show that the collision occurred?

Q. By Mr. Adams: Where, Captain Sato, according to this graph, do you believe the collision occurred?

(Testimony of Syunzi Sato.)

A. In that position there (indicating).

Mr. Adams: Let the record show the witness is indicating——

Mr. Cluff: Extreme end of the swing to a little beyond 350.

A. Right in that, in that neighborhood there, indicating.

Q. By Mr. Adams: The first swing from 340 to 350 at between 7:09 and 7:10?

A. The time was exactly 7:10½. The time was 7:10½, but according to the graph here, it shows about [892] in that neighborhood there.

Q. The time of the impact was 7:10½?

A. Yes.

Q. Will you continue explaining?

The Court: What does he mean by the time of the impact? Does that mean at the time it actually hit the vessel?

Mr. Adams: Yes.

The Court: And not the time that they completed tearing a hole in it?

Mr. Adams: No; right at the time of the impact.

Q. Will you continue to explain why the vessel changed its heading from 320 over to 330 and then back to the left again for a few degrees and then back to the right over to 360?

A. The reason for that one is the ship had absolutely stopped, it was not moving, and the engines were still on a little bit, and I would not know at that time which way the ship would swing.

The Court: Well, gentlemen, I think that we will excuse the interpreter now and this witness. I would like to start in at 1:30, gentlemen, because I want to adjourn tonight at 4:00 o'clock. Can you have witnesses here?

Mr. Adams: I think the witness will take 5 minutes.

The Court: Let us put on this witness now.

Mr. Adams: All right.

The Interpreter: If I can get back at 1:30 I will be [893] here.

The Court: As soon as you can come back, you had better come, because they may need you.

Mr. Adams: I will call Owen Durkin to the stand, please. [894]

OWEN E. DURKIN,

called as a witness on behalf of respondents, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Owen E. Durkin.

Direct Examination

Q. By Mr. Adams: Mr. Durkin, you are the manager of the Marine Lookout Exchange of the Los Angeles Chamber of Commerce, are you not?

A. The Marine Exchange.

Q. The Marine Exchange?

A. Yes, sir.

(Testimony of Owen E. Durkin.)

Q. The Marine Exchange maintains a lookout service at the harbor, through which it ascertains the arrivals and departures of vessels at Los Angeles Harbor, is that correct?

A. Determines arrivals and departures.

Q. That is determined in what manner, by what means?

A. By visual observation.

Q. Where is that lookout station located?

A. On top of the Municipal Warehouse No. 1, just to the west of the main channel entrance to Los Angeles Harbor.

Q. Is that lookout maintained 24 hours a day?

A. 24 hours a day, 7 days a week. It is constant.

Q. Was that true during September, 1940?

A. Yes. [895]

Q. During the entire summer of 1940?

A. Yes, sir.

Q. Is a record maintained of arrivals and departures of vessels which are ascertained in that manner?

A. Of every vessel arriving.

The Court: Gentlemen, can't you stipulate as to what these records will show?

Mr. Cluff: I don't know what he wants, but I will stipulate.

The Court: I presume it is the time the "Sakito Maru" was in.

Mr. Adams: No. I will tell you, if the court please.

Mr. Cluff: Tell me what you are trying to prove and maybe we can save some time.

(Testimony of Owen E. Durkin.)

Mr. Adams: I am going to prove in this manner the number of vessels since May 10, 1940, that entered Los Angeles Harbor from the south and the number of vessels, other than coming up from San Diego, I mean coming up from the Canal, and the number of vessels leaving Los Angeles Harbor bound for southern ports.

The Court: All right; you may proceed.

Mr. Cluff: Just ask him, or you tell us what it is, and if Mr. Durkin confirms it I will stipulate to it. Let us not take time with formal questions and answers.

Mr. Adams: Very well.

Q. Mr. Durkin, those records are maintained in the form [896] which you have in this bound volume, is that not a fact? A. Yes, sir.

Q. And is the point of destination ascertained by your service?

A. By the published record of schedules, plus—and confirmed in connection with the agencies of the lines, the operator or agent of the line here.

Q. In other words, the man on duty confirms from the agent or the operator the destination of the vessels? A. That is right.

Q. And is the last port of departure ascertained in the manner——

The Court: Counsel has offered to stipulate if you will tell him the figures.

Mr. Cluff: Yes; just give us the figures.

The Court: At 12:00 o'clock, gentlemen, I am

(Testimony of Owen E. Durkin.)

going to take an adjournment until 1:30 and if you don't finish up between now and 12:00 this witness is going to have to come back.

Mr. Adams: Well, I have laid the foundation now, if the court please. I propose——

Mr. Cluff: Let me ask you how many ships came in——

Mr. Adams: Would you mind letting me tell you what I am trying to prove?

Mr. Cluff: Oh, I beg your pardon.

Mr. Adams: This witness did not make a search of these [897] records. I am endeavoring to identify the records, and the search was conducted by another witness, whom I will put on. But I have now laid the foundation and traced the manner in which these records were maintained, so the other witness can take the stand and testify that he has searched them and can tell the number of vessels coming in from the south.

The Court: You are satisfied that the record was kept as counsel has stated?

Mr. Cluff: I am satisfied with anything Mr. Durkin states that his record shows.

The Court: All right.

Q. By Mr. Adams: Your records state the information that you have described, do they not?

A. Yes, sir.

Mr. Adams: That is all, Mr. Durkin.

The Witness: Fine.

Mr. Adams: Thank you. Unless you have some questions?

Mr. Cluff: No, no questions.

The Court: All right. We will take our recess until 1:30. If you have any other witnesses, have them here at that time, gentlemen, any short witnesses.

(Recess until 1:30 o'clock p. m. of this day.) [898]

Afternoon Session

1:30 o'clock

SYUNZI SATO

recalled.

Direct Examination

(Resumed)

Mr. Adams: Would the reporter please read the last question and answer of this witness if he can locate it?

(Record read by the reporter as requested.)

Mr. Adams: I wonder if you would read the last portion of that answer again?

(Last part of answer read by the reporter again.)

Q. When you say that the engines were still on a little bit and you did not know which way the vessel would swing, in what direction were the engines turning?

A. What time are you referring to now?

(Testimony of Syunzi Sato.)

Mr. Adams: I realize now that he perhaps does not know what we are talking about.

Q. I direct your attention again, Captain Sato, to the lines shown on this compass graph, running from a point a little beyond 320 over in zigzag fashion to about 360. Will you explain again why the heading of the vessel was changed in the fashion shown on that graph, if you know?

A. You mean the direction of the vessel as indicated on the graph here? [899]

Q. Yes. A. What that means?

Q. Yes. Can you account for the change of heading of the vessel as shown on that graph to bring it here?

A. That, I think, on account of the tide and the wind.

Q. Well, commencing with the line over here at a little beyond 320?

A. That is where the ship stopped swinging, and then according to the tide, why, it started to swing the other way gradually.

Q. About where on this graph, if you can locate it, would the heading of the vessel be when the anchor was dropped?

A. Right about in that neighborhood.

Mr. Adams: Let the record show the witness is indicating the point where the——

A. 335 degrees.

Mr. Cluff: A heading of 335 at what time?

A. In that neighborhood.

(Testimony of Syunzi Sato.)

Mr. Cluff: Yes.

A. That is when I dropped the anchor.

Mr. Cluff: Will you fix the time as shown by the graph?

Mr. Adams: As shown by the graph——

Mr. Cluff: 7:19 was the time.

Q. By Mr. Adams: Will you fix the time, Captain Sato, as shown by that graph?

A. According to the clock it was 7:17. [900]

Q. What was it according to the graph as he shows here?

A. That is right in that neighborhood, right there.

Q. And that was where the red line intersects with course 335 or compass direction 335?

A. At that time I didn't look at the compass.

Q. No. But that is the time as shown on the graph where this red line made by the ink pen intersects the compass direction 335, the line showing it?

The Court: May I ask counsel what difference does it make so far as this case is concerned? Where is there any materiality?

Mr. Adams: From then on I was going to say that all changes were made when the vessel was anchored.

The Court: I know, but you should have said that before. He has told you about the maneuvering of the boat and the graph shows the picture of it there, and after the point of impact the rest of those markings, it seems to me, are immaterial.

(Testimony of Syunzi Sato.)

Mr. Cluff: Well, not entirely so.

The Court: Well, you people are going to have to teach me some lessons on the materiality. I think I can see what is right and what is wrong. Some of these technical differences between you gentlemen are going to be pretty hard for this court to understand as to any detail after the collision was all over.

Mr. Adams: I will discontinue my questions along that [901] line in view of the court's comments. May I have the deposition of the chief officer, Yokota, please?

Mr. Cluff, do you recall that attached to that deposition is a photostatic copy of this chart?

Mr. Cluff: Yes.

Mr. Adams: Do you have any objections to the photostatic copy being introduced in evidence and our retaining the original?

Mr. Cluff: Why not put the original in?

Mr. Adams: Pardon me?

Mr. Cluff: I think the original will be more satisfactory. There is no reason, no operating reason why it should not go in evidence, is there?

Mr. Adams: It is in evidence, this photostatic copy.

Mr. Cluff: I mean, let us put the original in.

Mr. Adams: Will you cooperate with me in letting it be withdrawn from evidence after the case is decided?

Mr. Cluff: Oh, sure.

Mr. Adams: I will offer, then, the entire roll of

(Testimony of Syunzi Sato.)

graph recording in evidence. May the record show that the navigating chart which the Captain has been referring to from time to time was attached, or rather, it was offered into evidence at the time the deposition of Mr. Yokota was taken? And I renew my offer at this time. I offer this chart into evidence.

The Court: That is the one we could not find the other [902] day?

Mr. Adams: No. That chart that your Honor is speaking of is one attached to the deposition of Lieut. Hewins. This chart I have always retained in my possession, with the permission of counsel, since the deposition.

The Court: Then it will be introduced into evidence now.

Mr. Adams: Yes. It was already offered at that time, but I renew my offer.

The Court: All right.

Mr. Adams: It is already marked as Yokota's Exhibit No. 1 in evidence. Whether any further marking at this time is necessary or not I don't know.

The Court: You had better give it a new marking.

The Clerk: The graph will be "Sakito's" Exhibit J, and this chart will be Exhibit K.





(Testimony of Syunzi Sato.)

Q. By Mr. Adams: Captain Sato, you left the anchorage grounds right around noontime, did you not? A. Yes; about noontime.

Q. And you proceeded from the spot where you had been anchored to the outer harbor of Los Angeles Harbor, did you not? A. Yes.

Q. And after anchoring there for a short time you then proceeded into the Bethlehem shipyards and came alongside the dock, did you not? [903]

A. Yes, sir; I was there a little while.

Q. After you docked at Bethlehem shipyards did you cause an inspection to be made of the damage done to the bow of the "Sakito Maru"?

A. Yes.

Q. I show you a photograph which is already in evidence, marked Yokota Exhibit No. 9, and ask you if that photograph is a fair representation of the damage, apparent damage done to the starboard bow of the "Sakito Maru"? A. It is.

Q. I show you another photograph attached to the same deposition, which is marked Yokota 10, and ask you if that is a photograph of the port bow of the "Sakito Maru"? A. It is.

Q. And is that a fair representation of the apparent damage done to the port bow of that vessel? A. It is.

Q. Did you after the vessel arrived at the Bethlehem yards, cause measurements to be made of the distance from the stem, of the damage that was done to both bows? A. Yes.

(Testimony of Syunzi Sato.)

Q. How far back did the damage extend from the stem on the port bow?

Mr. Cluff: Just a moment. Did the Captain make the measurements?

Q. By Mr. Adams: Did you make the measurements yourself, [904] Captain Sato?

A. No; I did not.

Mr. Cluff: Well, go ahead.

Q. By Mr. Adams: Who did you direct to make the measurements?

A. The chief officer, he measured it.

Q. Did the chief officer then come and report back to you the results of his measurements?

A. Yes.

Q. Will you tell us what he reported to you was the measurements of the damage on the port bow from the stem of the "Sakito"?

Mr. Cluff: I will waive the objection to hearsay.

The Court: It is pure hearsay, counsel.

Mr. Adams: If the court please, I think it is done in the interests——

Mr. Cluff: I will waive the objection, your Honor.

The Court: You say you waive the objection?

Mr. Cluff: Yes.

The Court: All right.

A. About 16, 16 feet.

Mr. Cluff: On the port bow?

Mr. Adams: On the port bow.

(Testimony of Syunzi Sato.)

Q. There was no exterior evidence, then, on the hull of damage aft 16 feet from the stem, is that correct? A. No; there was no other. [905]

Q. How far back from the stem was there apparent damage on the starboard bow?

A. About the same.

Q. About how high above the water line was the damage on the starboard bow?

A. About 6 feet.

The Court: I didn't get his answer.

Mr. Adams: About 6 feet.

Q. Did that extend clear to the top of the top-most apparent damage?

A. About 10 feet to the top.

Q. I see. What was the furthest point above the surface of the water that damage was apparent on the port bow of the "Sakito"?

A. The furthest?

Q. Yes. What was the furthest extent?

A. About the same.

Q. About 10 feet? A. Yes.

Q. At a point 16 feet abaft the stem on both sides and extending from the water level up to about 10 feet what was the width of the "Sakito", the greatest width in that area?

Mr. Cluff: Have you any kind of a plan of the ship here?

Mr. Adams: I have a drawing, but it does not show that particular width. It is a drawing of the——

(Testimony of Syunzi Sato.)

Mr. Cluff: I mean, haven't you any blueprint? [906]

Mr. Adams: No.

Mr. Cluff: Any construction or loading plans of the ship at all?

Mr. Adams: No; we haven't. Did you ever ask for any, Mr. Cluff?

Mr. Cluff: No; I don't think I did.

A. I cannot give you—I don't remember the positive width. I think about 15 or 16 feet.

Q. By Mr. Adams: Captain Sato, there is a rake, is there not, to the bow of the "Sakito Maru"?

A. "Rake", what is rake?

Mr. Adams: I will withdraw the question.

Mr. Cluff: Maybe you can demonstrate it on a photograph.

Q. By Mr. Adams: From the water line of the stem, the extreme prow of the vessel overhangs, does it not? A. Yes.

Q. How much does it overhang?

A. I cannot give you any—I don't remember the positive.

Q. What is your best estimate?

A. A little less than 10 feet, possibly.

Q. In other words, if you dropped a line from the extreme prow of the "Sakito Maru" to where it would touch the water, that point where it touched the water would be 10 feet from the stem at the water level, is that correct?

A. Yes; I think so. I have never measured it. [907]

(Testimony of Syunzi Sato.)

Q. That is your best estimate? A. Yes.

Q. Does that same degree of rake continue beneath the water level to the keel?

A. No; that would not be because the ship does not go straight down. It goes off into an angle.

Q. I show you two drawings and I ask you what these drawings are? I show you one, first, and I will ask you what that drawing is.

A. This is the forward part of the ship.

Q. What does it show, which side?

A. Port side.

Q. Who made it? A. Second officer.

Q. When was it made?

A. Possibly, maybe the next day or the following day to that. I am positive, of the collision.

Q. Of the collision. Does that drawing indicate the damaged portions on the port bow?

A. Yes.

Q. Is the drawing a fair representation of the bow line from the immediate top to the bottom of the keel? A. Yes; it is.

Mr. Adams: I offer that drawing in evidence.

Mr. Cluff: Well, I think it is objectionable but I won't object. Go ahead and put it in. [908]

The Clerk: Exhibit L.

山崎戸丸 横濱製鐵所

PORT side 5' 10" met.



1138-134 Adm
L
SEP 18 1941
1138-134

Collisions Bulkhead

2nd Deck

3rd Deck

#1 Hold

183 179 175 171

No. 11113
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JUL 18 1942

PAUL P. O'BRIEN
CLERK

(Testimony of Syunzi Sato.)

A. I want to see something.

Q. By Mr. Adams: What is it, Captain, you wish to see? A. Show me the drawing.

Q. Referring to "Sakito's" No. L, do you wish to make some statement with reference to it?

A. According to the measurements of the width and the height, as indicated on the drawing, I cannot give you any correct measurements on that.

Q. Well, on what——

A. These are just approximate. These are all approximate measurements.

Q. Is that drawing to scale?

A. Yes; it is. The ship's officer is not an expert on making drawings; so I cannot give you any correct or exact measurement.

Q. What do these different colored portions show?

A. That is the damaged part.

Q. What does the red colored portion show?

A. Where it was cut.

Q. A hole punctured in the hull? A. Yes.

Q. And what does the brown show?

A. Where it was dented.

Q. I show you another drawing and ask you what that drawing shows? [909]

A. That is the starboard side.

Q. Is that also drawn to scale?

A. Yes; it is.

Q. Now, there are different colored crayons used on it.

(Testimony of Syunzi Sato.)

The Court: Is it hardly fair to say it is drawn to scale when he says the man who drew it is not an expert? It is rather unfair to everybody to assume that it is drawn to exact scale in view of that testimony.

Mr. Adams: Yes. I don't want to be committed to that extent and I don't wish to give that impression, either.

Q. There are different colored crayon marks shown on that. What does the pink indicate or red?

A. You mean the big round circle, pink circle?

Q. Yes.

A. That is where there was a hole made.

Q. Then the other colored crayon which is brown, what does that indicate?

A. Dented portions. That is where it was bent.

Q. By the Court: Does it indicate that there was damage done way down here?

A. Yes; that was dented.

Q. By Mr. Adams: About how far below the water line? A. About 7 or 8 feet.

Q. Was there any damage done to the immediate stem?

A. Yes. It is indicated there with a mark.

Q. Was the stem bent? [910]

A. A little bit.

Q. In which direction?

A. Practically straight. [911]

Q. Is that shown in this photograph which is Yokota's No. 9? Will you point it out?

(Testimony of Syunzi Sato.)

A. Indicating.

Q. Indicating on a level with the two holes shown in that photograph, but right at the immediate stem. Captain Sato—just a minute.

I will offer in evidence the diagram or drawing that the witness has last identified, showing the star-board side of the “Sakito Maru”.

The Court: Admitted.

The Clerk: “Sakito” Exhibit M.

100 ft 12 ft 12 ft 12 ft

STAIRS RISE scale too

No. 135 *Ad*

Ad

No. 77

SEP 1 1941

Ad

variable stores

variable stores

171

175

179

183

No. 10100
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 13 1942

PAUL P. O'BRIEN

(Testimony of Syunzi Sato.)

Q. By Mr. Adams: When the "Sakito" struck the "Olympic", just at the time of impact what was the angle of the axis of the "Sakito" with reference to the port side of the "Olympic"?

A. Very close to right angle.

Q. How far is the bridge from the stem of the "Sakito"? A. 65 meters.

Mr. Adams: You may cross examine.

Cross-Examination

Q. By Mr. Cluff: Captain, your forward draft was 27 feet 7 inches; that is right?

A. You mean the draft?

Q. The draft, yes; forward draft on the date of the collision? [912]

A. I cannot give you the exact figures in feet, but I will give it to you in meters.

Mr. Cluff: Will you stipulate that was the draft?

Mr. Adams: 24 feet 7 inches.

A. 7 meters and a half.

Q. By Mr. Cluff: Captain Sato, looking at the two drawings, L and M, "Sakito's" L and M, what are these vertical lines?

A. That is frame of the ship.

Q. Frames of the ship, yes. And the line drawn beyond the bow in a parallel with the deck, what is that line? A. Water line.

Q. Is that the water line as it lay in the water at that time, or the marked water line?

A. At the time that it was in the water.

Q. Do you know how wide apart the frames are?

A. I do not remember definitely.

(Testimony of Syunzi Sato.)

Q. Captain, as a matter of fact, on the starboard side back to the after hole on the starboard side, wasn't that, as a matter of fact, 23 feet and 3 inches, or 23 feet?

Mr. Adams: Wasn't what?

Mr. Cluff: The distance of the hole from the bow?

A. No; I don't think it was that much.

Q. Captain, have you any record now of the chief officer's report? [913]

A. I haven't got it with me.

Q. Was there ever any record made of the chief officer's report? A. This is the record.

Q. I thought you said this was made by the second officer?

A. The second officer made the drawing—the chief officer made the drawing, and on the investigation of the—the second officer made the drawing, and upon the investigation the chief officer, he made the measurements himself.

The Court: I don't think that counsel should take a great deal of time cross examining on these measurements, in view of the fact that the witness' testimony, while it has been admitted, was purely hearsay, if there is other evidence that may be of a more positive nature, because I will certainly accept a positive measurement by somebody who measured it rather than this character of testimony.

Mr. Cluff: To save some time on that, Mr. Adams, have you a survey report of the damages here that

(Testimony of Syunzi Sato.)

you would care to compare with mine out of court here sometime?

Mr. Adams: I will do it, rather than to delay now to look it up. If you will proceed with your questioning, I will see if I can locate it.

Q. By Mr. Cluff: Captain, you said that the angle of the collision was about a right angle. It was not an exact right angle, was it? [914]

A. It was about a right angle.

Q. About a right angle. Can you tell me whether the smaller side of the angle was to the right or to the left of the "Olympic's" 'midships.

A. No; I couldn't tell you that. I don't know what you mean.

Q. See if I can fix it this way: (Diagramming on paper with models of boats.) Let's use the small models. It is just the same. Captain, will you show the angle of the "Sakito Maru" with the port side of the "Olympic" at the moment of impact?

A. I can't. I think about in that manner.

Q. About in that manner. Will you fix it again, Captain, as best you can, so we will be sure of it?

A. I cannot give you it correctly.

Q. Just as well as you can, the best you can, Captain, that it all we ask.

(Witness arranging models on paper.)

Mr. Cluff: In case I slip, indicating a 10 or 15 degree angle to the left of a perpendicular.

Mr. Adams: I think you had better draw it.

(Testimony of Syunzi Sato.)

Mr. Cluff: Well, I am going to draw it, but I just wanted to be sure in case the thing slipped.

(Mr. Cluff diagramming on paper around models placed by the witness.)

I will mark this "Sakito". [915]

Q. Now, you are sure that the stern was to the left of the perpendicular, and not to the right?

A. At that time I believed that it was in that form.

Q. That is just at the time she hit?

A. Yes.

Q. Now, Captain, this is the starboard side. That last hole is between the 10th and 11th frame—right?

A. I don't remember the exact number.

Q. Well, count them.

A. That is No. 10—or 9 (indicating), No. 9.

Q. All right, 9th and 11th frame? A. Yes.

Q. Now, on the port side, between the 8th and 9th frame? A. Yes.

Q. So the damage was much farther aft on the starboard side than on the port side?

A. Yes; a little, it was.

Q. Wouldn't that indicate to you, Captain, that she had swung on an angle to the right and not on an angle to the left? A. No; I don't believe so.

Q. How do you account, then, for the fact that the hole on the starboard side is several feet farther aft than the hole on the port side?

A. Do you want me to explain that? [916]

(Testimony of Syunzi Sato.)

Q. Yes, please.

A. The ship would hit at that angle (illustrating), and, as you saw a short while ago, according to the course record and at the time that the ship hit, it instantaneously stopped; and then after that the head swung in this manner. That is why the holes appeared on the starboard side.

Q. So you think the swinging of the ship was enough of itself to put the starboard bow into the "Olympic's" side two or three feet beyond the port bow?

A. No; after it had entered the "Olympic", and instantaneously the ship stopped and, as it hit and went into the "Olympic", at the same time, instantaneously, the ship stopped and the bows stopped and the momentum of the ship stopped, and then she started to swing to starboard.

Q. All right. Captain, will you indicate on this drawing we are using here—I am placing the model now right on top of the mark showing the "Sakito" at the moment of the impact—will you move the model to the position to which she swung at the end of that 30 degree swing, the swing of the stern to starboard which immediately followed the impact?

Mr. Adams: I think he needs another model to move the "Olympic" at the same time.

Mr. Cluff: Well, just with reference to the "Olympic". Let us leave the "Olympic" where it is.

Q. I want to find out where the "Sakito" was

(Testimony of Syunzi Sato.)

with [917] reference to the side of the "Olympic", not with reference to where the "Olympic" was, but with reference to the "Olympic's" side what the angle was when the swing to starboard finished. Remember, your graph shows a 30 degree swing, Captain.

A. Before we got there the swing to the right at the time of the accident stopped about there, and then after that the "Olympic" swung in that manner.

Mr. Adams: In what manner? Let the record show.

Mr. Cluff: Indicating a twist of the "Olympic's" stern to her starboard.

A. The "Olympic's" stern swung to starboard.

Q. Now, that does not just answer my question. The "Olympic's" stern swings to starboard. All right, like this. Now, with reference to the port side of the "Olympic" the impact was about like this?

A. The port side and starboard side, it wouldn't make any difference; it is all the same boat.

Mr. Cluff: Just ask him to wait until I give him the question, until he gets the whole question.

Q. After the "Sakito" struck the "Olympic" at this angle—at this angle which you have indicated, then the stern of the "Saktio" swung to starboard?

A. Yes.

Q. 30 degrees?

(Testimony of Syunzi Sato.)

A. About 30 degrees. That was not at that time [918] instantaneously. It was after it hit——

Mr. Adams: I object to the question upon the grounds it assumes facts not in evidence, because the witness has never testified that the stern of the “Sakito” swung. He said that the heading changed.

Mr. Cluff: All right. Then let us put it the heading changed.

A. Will you give me the other model of the ship?

Q. Wait a minute. I will give you another one of the same size.

A. (Witness again demonstrating with models of boats on paper.) As it went into the “Olympic” and then turned and swung and then dropped out.

Q. All right. Now let us get the end of the swing. All right, now, all right. So, after the striking of the first impact the stern of the “Sakito” swung from an angle coming in from the “Olympic’s” bow over to an angle coming in from the “Olympic’s” stern?

A. What do you mean by angle?

Q. Well, will you explain to him what an angle is?

A. What do you mean by an angle when you refer to that here?

Mr. Adams: If the court please, I don’t think the question is very clear, because Mr. Cluff is talking about the stern swung and the witness has indicated that the stern did not swing but simply the heading of the vessel changed. [919]

(Testimony of Syunzi Sato.)

Mr. Cluff: Well, let us get at it this way here:

Q. All right, Captain, here we are at the moment of impact. Now, listen carefully, please to the interpreter. Put the two models in the position in which the two vessels were when the "Sakito" came to a stop.

A. You mean after the "Sakito" had stopped, to mark that?

Q. Yes; after she became entirely stopped.

Mr. Adams: You are talking only about when the "Sakito" stopped and not when the "Olympic" stopped?

Mr. Cluff: I am talking about when the "Sakito" stopped now, not when the——

(Witness illustrating.)

Q. Substantially a right angle there. Let us get a lead here that we can start from.

Mr. Adams: I think the record ought to show that those models are moving while the pencil is——

The Court: No; I will contradict that record on that, because counsel held that tight and made the initial marks so the models could be put back.

Mr. Adams: It seemed to me, if the court please, they were moving there.

Mr. Cluff: Mr. Adams, I will be glad——

The Court: Wait a minute. I have watched this.

Mr. Adams: I don't purport that I can do it any better, but I am just trying to indicate that I don't

(Testimony of Syunzi Sato.)

think you can [920] draw it right down to a gnat's eyebrow.

Mr. Cluff: Mark that "Sakito" 2.

The Court: Well, both counsel have been dealing with gnats' eyebrows here, so far as the court is concerned, in many respects.

Mr. Montgomery: Not our side, your Honor.

The Court: We will probably hear from you before we get through.

Mr. Cluff: I hope the court will assume that we are not just wasting the time of the court. Of course, I would not go into anything I did not think was important here.

The Court: I realize that, counsel, that neither side would do that—I hope not wilfully, anyhow.

Mr. Cluff: Do we agree that that is a fair representation of the position the witness put the model?

Mr. Adams: I will let the record speak for itself on that. I don't mean to discredit your attempt, Mr. Cluff, but it did not seem to me that you could hold him very definitely to something like that.

Mr. Cluff: Well, for what they are worth, I will offer them into evidence as the "Olympic's" next exhibit.

The Court: All right; let us turn to the next chapter then.

The Clerk: That is "Olympic" Exhibit 12.

No. 1138-138-Adm

FILED

Olympic

No. 12

SEP 19 1941

R. S. ZIMMERMAN, Clerk

No. 1138-138-Adm
 UNITED STATES CIRCUIT COURT OF APPEALS
 FOR THE NINTH CIRCUIT
FILED

JUL 13 1942

PAUL P. O'BRIEN,
 CLERK

2-5-41

Olympic

Saluto 2.

Saluto 1.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain, you say that the ordinary practice— [921] May I see the little deck log?

Mr. Adams: There is a photostat in evidence, attached to Yokota's deposition.

Mr. Cluff: Can we get the original? All right; this will do.

Q. Captain, it was the practice——

Mr. Adams: Here is the original, Mr. Cluff.

Mr. Cluff: All right. This may be a little easier to use.

Q. It was the practice on the "Sakito Maru" to log the bells on the even minute ordinarily?

A. What do you mean bells?

Q. The bells to the engine room, telegraph to the engine room.

A. Yes.

Q. And on account of the great importance of the moment of the collision you instructed the apprentice officer to log it at the half minute?

A. Yes.

Q. Now, the bell at 7:09, when you first sighted the barge, was that at exactly 7:09 or was it a little earlier or a little later?

A. The signal to where?

Q. The signal to the engines at 7:09 to stop.

A. That was what? [922]

Q. Was that exactly at 7:09, or was it, say, a half a minute later or half a minute earlier?

A. I cannot give you—I don't remember that definitely.

Q. That was a pretty——

(Testimony of Syunzi Sato.)

A. It was close to 7:09.

Q. That was a pretty important time. You did not give any special instructions about logging that time, did you? A. What do you mean by log?

Q. Put it down on the memorandum?

A. At that time it was a very important event and we could not be looking at the clock all the time. We had to watch what was going on.

Q. Captain, were these entries "7:09"—or here we are—"7:09 stop and full astern", were those actually written on this piece of memorandum before or after the collision?

A. Before the collision.

Q. But the entry of 7:14—or pardon me—the entry of 7:09 then was written between 7:09, when the bell was rung, and 7:10½, when the collision occurred, is that right?

A. After. This was recorded right after the signal was given to the engine room.

Q. And before the collision? A. Surely.

Mr. Cluff: I will ask that the original scrap log—well, we have got that in. That is all right. I will offer the original scrap log as the "Olympic's" next exhibit. [923]

Mr. Adams: I will join in the offer.

The Court: It is fine that you gentlemen agree on something again.

The Clerk: "Olympic's" Exhibit 13.

[Inserted at page 829 of this printed record.]

Mr. Adams: The photostatic copy, if the Court

(Testimony of Syunzi Sato.)

please, is already in evidence as one of our exhibits.

The Court: Yes; attached to one of the depositions.

Mr. Adams: Yes.

Q. By Mr. Cluff: Captain, you said that you thought the swing of the "Sakito" to her right, the swing of the "Sakito's" stern to starboard immediately after the collision was due in part to the fact that the port engine was not turning over as fast as the starboard engine; and you base that deduction—wait a minute. I am probably getting too much question here for you.

The Interpreter: Yes. I will ask to have that read so far.

Mr. Cluff: Will you read it as far as I have gone?

(Question read by the reporter.)

A. No, that's wrong; no, it's absolutely wrong. There are no facts that the port engine was not turning as fast as the starboard engine.

Q. You told us before noon here, just before you left the stand, that between 7:09 and 7:11 the port engine turned 120 revolutions.

A. I did not say anything like that. [924]

Mr. Adams: If the Court please, I object to the question upon the ground that it assumes facts not in evidence.

A. I said the port engine was revolving 150.

Mr. Adams: I can show you the exact log.

The Court: He took it out of the log this morn-

(Testimony of Syunzi Sato.)

ing, and the witness figured it out from the log this morning.

Q. By Mr. Cluff: Captain, getting back now to the morning, before the collision, you came on deck for the first time in the morning watch after daylight at six o'clock?

The Court: The morning of the 4th?

Mr. Cluff: This is the morning of the collision.

The Court: He testified 5:58.

Mr. Cluff: Yes, the bearing was at 5:58.

A. 5:58.

Q. And did you go on deck before they finished computing the beam bearing on Santa Catalina?

A. About the same time.

Q. And I suppose you checked those computations?

A. What computations are you talking about?

Q. The computations by which the officers fixed the beam bearing off Catalina, taken at 5:58?

A. No, that's the officers' work. I didn't.

Q. Did you examine the work afterwards?

A. Yes, I looked out myself, with my own eyes, and I saw this was positive.

Q. You were entirely satisfied with the position fixed [925] for the vessel at 5:58, as marked on the chart?

A. Yes, I was satisfied.

Q. Now, the theoretical course from that fix up toward the breakwater was established by this second line, that is, the line to the left of the chart, running from the 5:58 fix?

A. It is the same course as before.

(Testimony of Syunzi Sato.)

The Court: Read the question and ask him to answer it.

A. The only reason that line was drawn there was that the ship moved over from the original course to the left.

Mr. Cluff: Exactly. This was the position of the ship at 5:58?

A. Yes, I told you that a number of times.

Q. The reason that position is to the left of this line of the course from the Coronado Islands was because the vessel was set over during the night about a mile and a quarter?

A. Yes, I think so.

Q. From 5:58 until 7 o'clock you got actually an easterly set of about three-quarters of a mile to the position of the collision, is that right?

A. I think I figured that about half a mile.

The Court: I don't quite understand that question. The question is, about three-quarters of a mile easterly?

Mr. Cluff: Easterly set. That is, your Honor, computing his position from the line over here to the point of collision, which is established on this line here, about three-quarters of a mile. [926]

The Court: I see.

Q. By Mr. Cluff: A half or three-quarters of a mile is not important.

A. I want to tell you something. This line here and this line, are not parallel.

Q. Yes, I understand.

A. That line is parallel. The distance between the two lines is about half a mile.

(Testimony of Syunzi Sato.)

Q. Very well, I understand.

The Court: In other words, the boat had drifted over about half a mile from the 5:58, in about an hour.

Mr. Cluff: In an opposite direction from which it had drifted on the earlier course.

A. I think that is right.

Q. Captain, at 5:58, when you got the fix off Catalina Island, did you anticipate that you would get an easterly set?

A. I did not know that definitely.

Q. That is, the set might be either way?

A. I did not think that I would have to set it.

Q. Does he understand what I mean by the set of a current?

A. Surely, I know what you mean by set.

Mr. Cluff: May I have the answer?

(Record read by the reporter.)

Mr. Adams: "Would have to set it", if the Court please, there is something wrong with that. [927]

The Interpreter: It is my mistake.

Q. By Mr. Cluff: Will you explain to the captain that by a set, did he anticipate that his ship would drift or work over to the eastward, on account of any tide or current or any other factor.

A. At that time I did not think it would go either way.

Q. Of course, the theoretical course, the fix, from the 5:58 set, if extended, would have carried the ves-

(Testimony of Syunzi Sato.)

sel into the breakwater about three-quarters of a mile westward of the light?

Mr. Adams: I object to the question as unintelligible.

(Question read by the reporter.)

Mr. Cluff: Let me reframe that, so there won't be any question about it. The theoretical course, as plotted from the 5:58 fix, would, if made good, have carried the vessel into the breakwater about a mile or so west of the light?

A. If it had continued on that course.

Q. As you approached the breakwater, on that course, on the theoretical course, what did you propose to do to find the light, that is, to find the entrance?

A. I thought I would see it a little to my starboard.

Q. You thought you would see it?

A. I figured that I would see it a little to my starboard.

Q. You would see it a little to the starboard, and then [928] you would go in by observations?

A. After I would locate the light, or see the light on the breakwater, I would naturally have to maneuver into the breakwater, to get in.

Q. At 5:58 it was bright and clear, that is, for early morning it was clear? A. Yes, it was.

Q. No fog? You could see Catalina Island?

A. Yes, I could.

(Testimony of Syunzi Sato.)

Q. That was about ten miles away?

A. What was ten miles away?

Q. Catalina Island.

A. That was ten and a half miles, that beam distance.

Q. You could see the island clearly?

A. Yes.

Q. Could you see the mainland over on the star-board side? A. Yes, I could see it.

Q. You could also see the mainland, which must be at least fifteen or eighteen miles?

A. I don't remember that definitely. If you want it, I can give you the measurements with the compass.

Q. No; anyhow, you could see the mainland?

A. Yes.

Q. It stayed clear up until 7 o'clock?

A. Yes, it was about generally clear.

Q. When you came on the bridge at 7 o'clock it was still [929] clear on the sides, I think you said?

A. It was rather clear, yes. Some parts were not.

Q. On the sides it was clear?

A. Yes; some parts were not very clear.

Q. But hazy up ahead, about a mile or two miles ahead?

A. I think about a mile and a quarter.

Q. Could you see Catalina Island then on your port hand?

A. At 7 o'clock I did not see it any more.

(Testimony of Syunzi Sato.)

Q. Now, at 7 o'clock, you came on deck at 7 o'clock in response to a call? A. Yes.

Q. And you had given orders that you be called when the vessel was within five or six miles of the breakwater? A. Yes.

Q. Now, captain, on the chart, your navigation chart, there is a position marked on the course from the 5:58 fix which is marked 7 o'clock?

A. Yes.

Q. That was fixed by your officer? A. Yes.

The Court: Where is that 7?

Mr. Cluff: Right on this line, in this little circle, with the dot in the center. The little dot, the circle with the dot, that I am pointing to now, with the little figure of an anchor, that was the actual anchorage of the "Sakito Maru", computed after the collision, is that right? [930]

A. Yes, that is the place it was computed after the "Sakito Maru" had dropped her anchor.

Q. That is right. And that was by bearings to various places on shore? A. Yes.

Q. So that anchorage is a very definite position?

A. Yes.

Mr. Adams: In order that all the information might be before the Court, and you, Mr. Cluff, I would like to state at this time that I neglected during my direct interrogation to have the captain identify the chart in greater detail, on which various bearings were taken while they were at anchor.

Mr. Cluff: I have no doubt he took a two- to three-point bearing

(Testimony of Syunzi Sato.)

The Court: You can take it upon redirect.

Q. By Mr. Cluff: At 7 o'clock, captain, while the actual position of the vessel is marked on the theoretical course, it is probably true, is it not, that her actual position, that is, her physical position in the water, was still well to the east of that, as much as maybe a half a mile?

A. Yes, I think it did go to the east.

Q. And that would be due to the set of the current, probably?

A. Yes, I think so.

Q. From the 7 o'clock position to the place of anchorage was a trifle over two miles; about two and one-eighth miles? [931] Will you check me on that? A little less than two miles? Try it again. Mr. Adams, have you dividers?

A. Two miles.

Q. That is close enough.

A. I want to explain something. The position at 7 o'clock, that is the position of dead reckoning from 5:58.

Q. Yes.

A. Now, as to the actual definite position of the ship, whether it was here, or a little to the side, or to the back, or to the left, I couldn't give you definite.

The Court: I understand that he fixed that place at 7 o'clock by reason of the mileage she covered.

Mr. Cluff: He has the mileage, the 5:58 mileage from the cross bearing at 8:24.

A. I want to tell you some more. This position

(Testimony of Syunzi Sato.)

is taken two points, the angle being very sharp, it is not very correct.

Q. At any rate, the beam bearing at 5:58, that is a good fix? A. Yes.

Q. Captain, from 7 o'clock, when you came on the bridge, until 7:03, you were proceeding at 16 knots over the ground?

A. 16 miles—16 knots.

Q. At 16 miles, you would proceed, from the 7 o'clock position, just .8 of a mile, is that right?

A. What do you mean by .8 of a mile? Up to what? [932]

Q. How far would you go between 7 and 7:03? Figure it out any way you want to.

A. Three-quarters.

Q. Three quarters of a mile? A. Yes.

Q. That is close enough. Will you take the chart? Find the 7 o'clock theoretical position, as established on the theoretical position for 7:03? Hold the point there. I will draw a little larger circle around there, and mark it with an arrow, so as not to confuse it with the other marks on the chart, "7:03". Now, at 7:03, captain, you ordered the engines from full ahead to slow ahead—both engines? A. Yes.

Q. And you told us yesterday that it would take you about three minutes to decelerate the speed of the ship?

A. Do you mean from the full to slow?

Q. From full speed to slow, about three minutes? A. Yes.

(Testimony of Syunzi Sato.)

Q. So during the three minutes, it is fair to say that the average speed of the ship during the whole three minutes was about 11 knots, is it?

A. That I don't know, because it gradually decreases.

Q. Of course, it gradually decreases. You started at 16, and ended up at 6, so it would be about 11, wouldn't it?

A. I don't know whether it would be 10 miles or 11 miles.

Q. Captain, will you figure, by dead reckoning, how far [933] you would go in those three minutes, while the ship was decelerating, and figure it any way you want.

A. What do you mean, the distance to where?

Q. The distance from 7:03 to 7:06, when the engine was fully decelerated?

A. Can I figure it now?

Q. Yes, any way you want to.

(Short recess.)

Q. Captain, have you been able to compute the speed of the "Sakito Maru" during the three minutes while the engines were decelerating?

A. Half a mile. That is for 10 miles. 10 miles it would be 5.5.

Q. What do you think the speed was, 10 or 11, the average speed? A. That I don't know.

Q. Let's take an average and call it 10½.

The Court: He says 10.

Mr. Cluff: I will take his figure.

A. Half a mile.

(Testimony of Syunzi Sato.)

Q. Will you put down, starting from the 7:03 position, which you have marked on the chart here, —will you fix the half mile?

A. Can I explain it?

Q. Yes.

A. According to this chart, the scale is too large, and [934] it might be a little incorrect.

Q. Yes, it would probably be a little incorrect.

A. About; approximately.

Q. Just approximately, yes. I will draw a circle around it, with an arrow, and mark it 7:06. Now, captain, while this position you have fixed is on a theoretical course, it is fair to assume, is it not, that the actual course, that is, the actual position of the ship, at 7:06, was about on a course of 340 true, about a half a mile to the eastward?

A. That is the position of the ship.

Q. So the actual position of the ship, instead of being here where we have drawn the 7:06, the theoretical position, it was actually on a line of about 160 degrees true from the breakwater? [935]

A. I don't know anything about that. How can I know that?

Q. This is a fair statement, isn't it, Captain: By dead reckoning from the position of 5:58, the definite fix at 5:58, you had gone about 16½ miles over the ground to the 7:00 o'clock position?

Mr. Adams: I object to the question upon the ground that the witness has already indicated that he cannot speak with definiteness about these mat-

(Testimony of Syunzi Sato.)

ters, because that position at 7:00 a. m. was fixed by dead reckoning, and it might vary.

Mr. Cluff: He has explained that fully.

The Court: He is not getting anything as close as you lawyers are. He isn't getting it down to a gnat's tooth.

Mr. Cluff: I know he isn't getting it down to a gnat's tooth. I am wanting to get it as near to a gnat's tooth as I can.

Q. Now, Captain, according to the way you gentlemen in the Japanese merchant marine calculate visibility, what visibility did you have—what is the minimum visibility when you say the weather is clear?

A. Do you mean from the bridge, when the weather is clear?

Q. When you make a notation in the log that the weather is clear, what would be the minimum visibility on which you would make that entry?

A. When we record it as clear, it is not only visible- [936] ity, but it also refers to the condition of the sky.

Q. Let us put it this way: Suppose there was a sort of a haze, but you had visibility 5 miles, would you put that down as clear or foggy?

A. We would insert that as misty.

Q. So that it would take a visibility of more than 4 miles through a haze before you would say it was clear?

(Testimony of Syunzi Sato.)

A. There is no positive mileage there, whether it is 4 miles or 5 miles, to determine the visibility.

Q. Captain, when you came up on the bridge at 7:00 o'clock, or shortly thereafter, your chief officer was in charge of navigation?

A. Up to 7:00 o'clock.

Q. And then you came on the bridge and took over? A. Surely.

Q. What was the first thing you did when you arrived on the bridge?

A. Surely, as soon as I got up on the bridge, I looked out.

Q. You took a look at the weather?

A. Yes, I did.

Q. And is that when you ascertained the visibility, as you testified yesterday?

A. Yes, generally.

Q. And did you consult with your chief officer, inquire as to what his estimate of the visibility was? [937]

A. Did I? I did not consult him.

Q. You did not consult with him?

The Court: Did they have an instrument to test visibility?

Q. By Mr. Cluff: Captain, you don't have any instrument to test visibility?

A. I never heard of such a thing.

Mr. Cluff: I did not, either.

The Court: I thought you used that expression.

Mr. Cluff: No, I asked him if he checked with the chief officer to ascertain his view of visibility.

(Testimony of Syunzi Sato.)

Mr. Montgomery: He said estimate.

Mr. Cluff: Estimate, I think, is the word I used. So you did not consult with your chief officer about the visibility at all?

A. I have already told you I did not consult with him.

Q. Had the 7:00 o'clock position been marked on the chart when you came on the bridge, or was that done while you were there?

A. I don't remember that definitely, but the chief officer made that notation.

Q. You don't remember, though, whether it was before or after you came on the bridge?

A. No, I do not remember that definitely.

Q. When you did come on the bridge, at 7:00 o'clock, you knew that you were just about 5 miles from the break- [938] water light?

A. Yes, after I investigated and looked at the chart to determine it. Whether that was before 7:00 or after 7:00 I am not definite on that.

Q. As a matter of fact you know now, Captain, do you not, that your position at 7:00 o'clock was probably not over 2 miles from the position where the "Olympic" was lying? You know that now, don't you?

A. Yes, by looking at this chart, I can say that it is 2 miles.

The Court: You say at 7:00 o'clock it was only 2 miles?

(Testimony of Syunzi Sato.)

A. At 7:00 o'clock it was just two miles by measurement.

Q. By Mr. Cluff: Captain, when you came on the bridge, did you use binoculars or any aids to vision, to look around and ahead of the ship?

A. Surely I did. I don't understand you, when you say did I use the glasses to determine visibility.

Q. Did you use glasses to look ahead; not visibility, but to look ahead? A. Yes, I did.

Q. What sort of glasses did you use?

A. Two prism; both eyes.

Q. Do you know what the power is?

A. Six power glasses.

Q. Did you see anything ahead?

A. I did not see anything ahead. [939]

Q. Either two or three points to the port or starboard bow? A. No.

Q. Or dead ahead?

A. I did not see anything.

Q. At 7:03 your position must have been not over a mile and a half from the barge, that is, when you slowed down?

A. No, at that time I didn't know, but after it was figured on the chart here, by figuring on this chart, it would appear that it would be about that.

Q. About a mile and a half? A. Yes.

Q. At 7:03, when you ordered the engines slowed, and the whistles blown, you didn't see anything ahead then? A. I didn't see anything.

Q. Captain, is the "Sakito Maru" equipped with

(Testimony of Syunzi Sato.)

a mechanical steering device; what we call in the American merchant marine an iron mike?

A. That is all done by hand.

Q. You always steer by hand?

A. By hand, by the quartermaster.

Q. Do you have a deep sea lead, a sounding device? A. Yes, it has.

Q. What sort of a device is it?

A. A thin wire, and a lead at the end, and it is [940] dropped in the ocean.

Q. You don't know what they call a fathometer? I don't know whether he knows that.

A. I know what a fathometer is, but we haven't got it on the "Sakito Maru".

Q. So the means by which you take soundings is to drop some lead?

A. If it is necessary, we use it.

Q. Captain, at your position at 7:03, you were just approaching the 30 fathom curve? That is right, isn't it?

A. Yes, it would be about that.

Q. About the 30 fathom curve? A. Yes.

Q. Did you take any soundings prior to the collision? A. No, I did not.

Q. If you had taken soundings it would have tended to verify your position with regard to the theoretical position and the actual position, would it not?

A. No, it could not. I want to explain that.

Q. Will you explain, Captain?

(Testimony of Syunzi Sato.)

A. It is absolutely impossible to determine whether it is a mile or three-quarters of a mile by taking two soundings.

Q. Now, Captain, your first officer was on the bridge with you? A. Yes. [941]

Q. Isn't it the custom, Captain, when you are approaching, on going into or out of a harbor, for the first officer and the carpenter, and one or two sailors, to be on the forecastle head?

A. Yes, sir; usually we get a little closer, though.

Q. You did send the first officer and the carpenter to the forecastle head when you got how close to the harbor—how close to Los Angeles, we will say?

A. When we get to about two or three miles we make preparations to lower the anchor.

Q. Then you clear the anchor, and have the carpenter standing by, so that on signal from the bridge, both anchors can be dropped immediately?

A. Within two or three miles, yes, we make those preparations.

Q. Do you make any distinction, Captain, when you send your ground tackle crew to the forecastle head, whether the weather is clear or foggy?

The Interpreter: I did not get the question.

Q. By Mr. Cluff: If there any difference in the distance from port you send your ground tackle crew, the first officer and the carpenter, and sailors, if necessary, to handle the anchor on the forecastle head—is there any difference, whether the weather is clear or foggy?

(Testimony of Syunzi Sato.)

Mr. Adams: I object to the question upon the ground it is incompetent, irrelevant and immaterial. I can't see [942] any materiality, if the court please.

Mr. Cluff: Maybe I have not a very logical mind, but it would seem to me if he had been ready to drop anchor, on his own testimony, he would have avoided this collision.

Mr. Adams: He says when he gets within two miles or so of the breakwater.

Mr. Cluff: That is a question for the court to determine and not for him to determine, whether he was negligent or not in so doing. I am trying to find out what his practice was.

The Court: Was he under any obligation to do so?

Mr. Cluff: That is a question for the court to determine, whether it is good seamanship under the circumstances. He has testified that if he dropped both anchors he could stop the ship immediately. He testified that in approaching the harbor he did not have his officer on the forecastle head. It was foggy. I am trying to find out if he makes any distinction in carrying out conventional precautions, whether the weather is clear or foggy.

Mr. Adams: There is no evidence that that is a conventional precaution.

Mr. Cluff: Do you dispute the fact?

Mr. Adams: I am going to put you to strict proof on it.

(Testimony of Syunzi Sato.)

The Court: I will overrule the objection. It is a whole lot like I stated before, that if a fellow drove a little faster, he would not meet the other one at the [943] intersection.

Mr. Cluff: That is true, your Honor; if you haven't got a look out, and a number of other things the courts have been pretty strict about saying it is a fault, if they don't do it.

The Court: The court will be educated, I presume, before he gets through with you lawyers. [944]

Mr. Adams: It is outside of the pleadings. There is nothing about its being a fault.

Mr. Cluff: We have adopted the same practice you have, Mr. Adams, of putting in a shotgun charge——

The Court: I have ruled.

The Witness: It depends on the time and condition.

Q. By Mr. Cluff: That is, if it is foggy——

A. At that time,——

Q. If it is foggy, you send the crew to the fore-castle head earlier than if it is clear?

A. At that time I did not believe, at 7:03, that it was necessary to do that.

Q. Why was it, Captain, that you did not think it was necessary?

A. There was no reason or necessity to send them there.

Q. Captain, how often have you been in and out

(Testimony of Syunzi Sato.)

of the Harbor of Los Angeles in charge of a ship, or as an officer on a ship?

A. Not even though I was a captain; even an officer?

Q. Either as captain, officer, or in any other capacity.

A. I am not definite, but about 10 times.

Q. And during what period of time?

A. About five or six years ago.

Q. Can you give us the year definitely?

A. About 1933.

Q. Have you been coming in and out of Los Angeles more [945] or less continuously since 1933?

A. During the years 1933 and 1934.

Q. What ship were you on at that time, Captain? A. "Sama Maru".

Q. That was one of the big passenger vessels of the NYK Line? A. Yes.

Q. What was your capacity?

A. Chief officer.

Q. Chief officer of the "Sama Maru"?

A. Yes.

Q. And the "Sama Maru" was on what line at that time?

A. Yokohama, Honolulu, San Francisco, Los Angeles, and on the homeward voyage the same way.

Q. Did she go south of Los Angeles?

A. Not with that boat.

Q. In '33 and '34 you were in and out of the Port of Los Angeles, about how many times?

(Testimony of Syunzi Sato.)

A. About five or six times.

Q. After you left the "Sama Maru", were you on the North American Pacific Coast run?

A. Yes.

Q. On what vessels were you then?

A. The "Atago Maru".

Q. And in what capacity?

A. Captain. [946]

Q. Where did the "Atago Maru" run?

A. From Japan to Honolulu and Los Angeles, and then South America.

Q. And down to South America, on the run to South America from Los Angeles, you made Valparaiso, and the West Coast ports?

A. Yes.

Q. The West Coast of South America?

A. Yes.

Q. In making your passage south from Los Angeles for South America, you run on approximately the same course you run to go to the Canal, don't you?

A. You mean the course to go south?

Q. The course to go south; leaving Los Angeles Harbor, it's just the same as going to the Canal, on about 160 true?

A. That is about the course that we take; possibly we might change two or three times.

Q. About 160 true; some place between 150 and 170?

A. Generally in that neighborhood.

Q. The "Atago Maru", how long were you on the "Atago Maru"—during what years?

A. I am not positive about the year, but I think it was between '36 and '37.

(Testimony of Syunzi Sato.)

Q. During that time how many trips south, in and out, did you make from Los Angeles to South America and back? A. Three times. [947]

Q. And that was in '36 and '37? A. Yes.

Q. After leaving that vessel in '37, what was your next command?

A. I went to another ship.

Q. What was the name of that ship?

A. There have been a number of changes.

Q. In what service were you running then, let us put it that way?

A. I went throughout Japan.

Q. At any time in '37 or '38 did you make any voyages to Los Angeles?

A. No, I didn't. That's in '38?

Q. '38. In '39 did you make any voyages to Los Angeles? A. No, I did not come then.

Q. Did you take command of the "Sakito Maru" when she was first put in commission? A. No.

Q. You were not her first captain? A. No.

Q. When did you first become captain of the "Sakito Maru"? A. June, 1940.

Q. So that was just on the round voyage on which this accident occurred?

A. It was that voyage. [948]

Q. That is, you took command somewhere in Japan, and you brought her out, and went to New York?

A. I went on board in June, in Japan; then I went to Manila; then Kobe and Yokohama——

(Testimony of Syunzi Sato.)

Q. That is all right; you need not enumerate the ports. Captain, on that voyage you called at Los Angeles for bunkers, bound for New York, on July 16, 1940?

A. At that time it was not only bunkers; I think we discharged some cargo.

Q. But on July 16 you were in the Port of Los Angeles? A. Yes.

Q. According to the pilot records—correct me if I am wrong, Mr. Adams—the ship arrived at the NYK berth in San Pedro, Berth 153, on July 16, at 10:40 a. m.

Mr. Adams: You want me to correct you if you are wrong. Our records of arrival at the port are different from that. It was 7 a. m. at the breakwater.

Mr. Cluff: I have her docking time here. I will accept that.

Q. You arrived at the breakwater at 7 a. m. then, and cleared the breakwater, outbound, that is, south-east, at 7:57 p. m.?

(To Mr. Adams) Will you check me on that?

Mr. Adams: I have the lookout record, which is 7 o'clock.

Mr. Cluff: Mr. Adams, I will accept your correction.

Q. You were in command of the ship on that outward [949] passage from Los Angeles, on July 16? A. Yes.

Mr. Adams: If the court please, I would like

(Testimony of Syunzi Sato.)

to have the witness informed whether Mr. Cluff meant, when he said he was in command of the ship—whether he was master of the ship, or whether he was in command as a navigator on the bridge at the time.

The Court: I presume he will develop that. Proceed.

Q. By Mr. Cluff: Captain, I suppose it is your custom always to be on the bridge when your ship is entering a port practically from the time you get on soundings, and when she is leaving the port until she is well clear of the land?

A. What do you mean by soundings?

Q. Well, until you are well clear of the land. Let us change that. He apparently does not understand it. Let us explain to the Captain that when I say “soundings” I mean when he is close enough to the shore so it is practical to take soundings by mechanical devices on board.

A. What do you mean?

Mr. Cluff: Let me explain off the record.

(Mr. Cluff and interpreter conferring together.)

The Interpreter: I understand that.

A. I understand what soundings mean.

Mr. Cluff: Let me amend the question here and we will get at it quicker. [950]

Q. Is it your custom, Captain, to stay on your bridge, supervising the navigation, both coming

(Testimony of Syunzi Sato.)

into and leaving a port until you are well out at sea?

A. What is that?

Q. Until you are well clear of the land?

A. That depends upon the condition at that time.

Q. When you took the "Sakito Maru" south from Los Angeles on July 16th at 7:50, isn't it true——

The Court: At 7:50? 7:05.

Mr. Cluff: 7 o'clock, yes.

Q. Passing the breakwater at 7 o'clock, that the weather was clear, the sea smooth?

A. I haven't got that recollection at this time. I think it was clear.

Q. You think it was clear. Now, your course as you went south was about 160 true, or some place between 155 and 165?

A. I think it was in that neighborhood.

Q. On July 16th it would be broad daylight until around half past 7, would it not?

A. P. M.?

Q. Yes; P. M., half past 7 P. M.

A. I don't remember that.

Q. Captain, on the course that you went out you must have passed within a half a mile, or probably closer, of the position where you ran into the "Olympic" about two [951] months later, isn't that true?

A. I don't remember that.

Q. Well, figure it out here. Was the course——

A. How do you mean figure it out?

(Testimony of Syunzi Sato.)

Q. Was your course going out on July 16th about 160 true from the breakwater?

A. I will explain that.

Q. Go ahead.

A. When the ship left the Harbor we do not always set the course, because possibly near the Harbor there must be something, so we have to maneuver through there.

Q. After maneuvering a little right around the entrance, when you get off a mile or two you take a departure, that is, you take a bearing some place and get a departing fix, don't you?

A. Yes; we do. We take a—it depends where we are. We take it.

Q. So I suppose on that trip south—this is a fair assumption, isn't it—that you took your departure some place within a mile or two of the breakwater light and headed south about 160 true or thereabouts?

A. I think generally that it was taken.

Q. So you must have passed——

The Court: Just a moment. I would like to have him explain his answer, what he means. He says that when they are leaving the Harbor they generally don't take their [952] bearings because a certain amount of maneuvering has to be done after leaving the Harbor.

Mr. Cluff: Possibly, I think, I know what he means.

The Court: I know what he means. But did he

(Testimony of Syunzi Sato.)

do that on that occasion? That is what I am asking.

Mr. Cluff: All right.

Q. Captain, do you remember any extraordinary maneuver at the time you left the Harbor on the "Sakito Maru" on July 16th?

A. Yes; I did.

Q. What extraordinary maneuver did you make?

A. Because that was close to the Harbor. What do you mean, up to how many miles?

Q. No. As you left the Harbor on July 16th, as you passed out of the breakwater, you don't remember anything unusual that you had to go a mile or so off to the right or a mile or so off to the left, do you?

A. I have no such recollection.

Q. And about all you would maneuver in going out of the Harbor would be to turn a little to the right or a little to the left to avoid another ship; that is right, isn't it?

A. Surely, if there was something there we would have to do it.

Q. So after you got out of the Harbor you would get out a mile or so until you could get two good points for a fix? [953]

A. We take it maybe out one mile, two miles or five miles, whatever it may be.

Q. But anyhow, you get out there and take a fix and then you head right straight on your course?

A. Yes.

Q. Now, Captain, do you remember going out on

(Testimony of Syunzi Sato.)

that time some time about between 7 o'clock and 7:15 or thereabouts, at about the position where you ran into the "Olympic", of seeing three barges at anchor?

(Question read by the reporter.)

A. I haven't got that recollection.

Q. Would you say that you did not see them?

A. I have no recollection whether I did see it or did not see it.

Q. Captain, had your chief officer been on the "Sakito Maru" on her first voyage, Mr. Yokota?

A. I don't think he was on the first voyage.

Q. Did you have any officers on the "Sakito Maru" on the voyage when you were her captain that had been on the ship on previous voyages?

A. The chief officer was on before me.

Q. Did you consult with the chief officer about any vessels or fishing grounds or any other things that might affect navigation around in the vicinity where the "Olympic" was lying?

Mr. Adams: Objected to as incompetent, irrelevant and [954] immaterial. A. What time?

Q. By Mr. Cluff: At any time after you took the command of the ship up to the collision?

Mr. Adams: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. No; I did not. I want to explain.

Q. By the Court: Well, Captain, why did you want to be called at 7 o'clock?

(Testimony of Syunzi Sato.)

A. You mean the day of the collision?

Q. Yes.

A. Because I want to be protected when we get in about five or six miles from the breakwater.

Q. Why?

A. So when we get close to the breakwater, why, I want to be there.

Q. Why did you want to be there?

A. That is the Captain's duty.

Q. Isn't it a fact that as you approach a harbor or breakwater, such as you approached that morning, that the Captain anticipates meeting vessels?

The Interpreter: Repeat that, please.

(Question read by the reporter.)

A. No; that is not so. Of course, when we get close to a harbor that is the reason I always want to be on the [955] bridge.

Q. For what reason?

A. Getting close to the harbor.

Q. Then he does not anticipate meeting any other vessels in the vicinity of the harbor?

A. Possibly they would be and possibly they would not be.

Q. Ask him if it is not a fact that the reason that he wanted to be called at 7 o'clock was that he could have direct command of the maneuvering of his vessel as it approached the harbor.

A. That is right. The reason is also that when the Captain goes to the bridge that he takes over all the maneuvering of the ship.

(Testimony of Syunzi Sato.)

Q. And they expect there is a possibility of unusual maneuvering as they approach the harbor, do they not? A. That is right.

Q. So he figured on taking charge of the boat about five miles out?

A. I thought that it was enough if I got to the bridge when we got within five or six miles.

Mr. Cluff: Has the court any further questions?

Mr. Adams: The witness was about to make an explanation when the court asked a question and I suggest he be permitted to make the explanation he was going to give.

A. No; I have nothing particular. [956]

Mr. Adams: Something about why he did not consult with the chief officer. He asked him how he explained it and then the court asked a question. .

Mr. Cluff: Yes; I remember that.

Mr. Adams: Will the reporter go back in the record to just before the court's question? May I have the question and answer read, just before the court asked a question?

The Interpreter: Yes; I got that. I think the question was whether there were any fishing spots around where the collision happened. Isn't that what you asked?

Mr. Cluff: No; I didn't ask him that. Yes; I asked him if he consulted his chief officer as to whether——

A. You mean with reference to fishing spots?

Q. Fishing spots or any other thing that might affect navigation.

(Testimony of Syunzi Sato.)

A. I never did consult with him. I never thought that in a harbor as busy as Los Angeles, where ships were going in back and forth, that there would be any fishing barge close to the harbor.

Q. Captain, you have passed out of Los Angeles Harbor on that southbound course of around between 150 and 170 true at least five or six times during the past six years; that is true, isn't it? [957]

A. No. No. When I came in Los Angeles Harbor we came in the opposite direction.

Q. When you were on the South American run, anyhow? A. Three times.

The Court: That is covering the same ground.

Q. By Mr. Cluff: Three times in and three times out. Six times altogether you went over these waters? A. It would be six times.

Q. Didn't you observe, Captain, during this time that this area right around in here where this accident happened was a fishing bank which, day and night, vessels of all sorts were laying at their anchors and handling their nets?

Mr. Adams: If the court please, this Captain was not there day and night on those fishing grounds and Mr. Cluff is expecting him to retain that all in his memory after all this time.

The Interpreter: Repeat the question.

(Question read by the reporter.)

A. I haven't got that recollection.

Q. By Mr. Cluff: At any time when you went in

(Testimony of Syunzi Sato.)

or out of Los Angeles Harbor prior to the collision——

The Court: He has answered. He has told you he hasn't any recollection. He has told you a half a dozen times.

Mr. Cluff: I am not asking him if he has any recollection. I am asking him if he has seen any fishing boats there on any of these occasions. That is what I propose [958] to ask him.

Mr. Adams: He has answered that. He said he didn't have any recollection.

Mr. Cluff: He said he didn't have any recollection about any fishing banks and now I am asking him if he has any recollection of having seen any fishing boats there on any of these occasions.

The Court: You might ask him if he saw a canoe out there.

Mr. Cluff: All right; I will ask him that question. It seems to me this is a legitimate line of examination. I don't want to presume on the court's——

The Court: It is very apparent the witness is not going to admit that he ever knew anything was out there.

Mr. Cluff: If the court has that impression, all right.

The Court: I don't say that he is. Please don't misunderstand. I don't say that he is, but it is very apparent.

Mr. Cluff: Forgive me if I get impatient. This is the end of a long day, and I am sorry.

The Court: The court may get impatient, too.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain, the Nippon Yusen Kaisha has a large organization in Los Angeles at berth 153, both in Los Angeles and berth 153, that is true? A. You mean Japanese?

Q. Well, Japanese or other races. I mean employees [959] of the N. Y. K., handling their organization here?

A. I think they have; yes.

Q. They have at the harbor what we would call a marine superintendent, that is, a port captain or somebody who has a general charge of the vessels when they call here?

A. You mean the company, N. Y. K.?

Q. The company, yes.

A. I don't think they have any. I don't remember.

Q. They have someone at the dock, don't they, that takes care of the supplies and services the vessel?

Mr. Adams: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Cluff: My purpose—all right.

A. Yes; they have.

Q. Who is that gentleman?

A. I don't know his name. I don't remember it.

Q. When you came in with the "Sakito Maru" on July 16th, I suppose you consulted with this gentleman, the marine superintendent, or whatever his title is? A. You mean July 16th?

Q. Yes.

(Testimony of Syunzi Sato.)

A. I never have consulted him on navigation.

Q. You did not ask him if there were any conditions around the harbor that you should take a look-out for, going in and out? [960]

Mr. Adams: If the court please, I object to that as incompetent, irrelevant and immaterial.

The Court: Object on the grounds it has been asked and answered, because he said he didn't consult with him.

Mr. Cluff: He said he didn't consult with him. Well, I will accept the answer.

Q. Captain, you read some English, do you not?

A. Yes; a little.

Q. I notice your logs are kept in English. That is a general custom, not only on the N. Y. K. Line, but on most Japanese offshore vessels?

The Court: Well, whatever they used on his vessels.

Q. By Mr. Cluff: Who writes up the logs?

A. The officers of the watch, different times.

Q. You read English sufficiently to read and understand the logs? A. Yes; I can.

Q. Are you familiar with the "Coast Pilot," a publication of the Department of Navigation?

A. A what?

Q. The Coast Pilot, an official publication of the Department of the Bureau of Navigation?

A. I have seen it and I haven't seen it.

Q. Do you have a copy of the—wait a minute. This is a copy of the book to which I have reference, Captain. A. I have seen this. [961]

(Testimony of Syunzi Sato.)

Q. Do you have a copy on board the "Sakito Maru", or did you have at the time of the collision voyage?

A. Not at that time I didn't see it.

Q. Did you have on board any book or publication containing local information as to recommended courses approaching Los Angeles Harbor?

A. I didn't see that book which he just showed me but we have other books.

Q. Well, do you have any book put out by any authority of the United States, either in English or any translation in Japanese?

A. At times we have both.

Q. All right. Can you give us the name of any publication, any such publication that you have?

A. No; I just cannot. I have forgotten it.

Q. Where did you determine upon the course 340 true as the approach to Los Angeles Harbor?

Mr. Adams: Just a minute. May I have the question read again, please?

(Question read by the reporter.)

Mr. Adams: I don't understand the question. I object to it as incompetent, irrelevant and immaterial and unintelligible. Where he did this, does he mean on this voyage or does he mean in terms of years of experience or when?

Mr. Cluff: I mean on this voyage. When did he set the [962] course of 340 true?

Mr. Adams: I have no objection, with that explanation.

(Testimony of Syunzi Sato.)

A. You mean that day or on that voyage?

Mr. Cluff: Let us see if we can help.

Q. The course 340 true was set some place off the Bonita Islands, wasn't it? You got a beam bearing on the Bonita Islands down off the coast of Lower California? A. Yes. .

Q. About 9:00 o'clock the previous day?

A. Yes.

Q. And then you got a tentative fix as you passed Coronado?

A. That was 1:50 when we passed Coronado.

Q. Yes. And that projected course of 340 true from those points, if made good, would carry you right to the breakwater. Now, that is the way you laid it down, isn't it? A. That is about.

Q. That is about it, yes. Now, if the weather had been clear and remained clear you would have proceeded right up until you could have gotten sight of the breakwater, and then you would have maneuvered your ship in; that is right, isn't it?

A. No; wrong. Can I explain to you?

Q. Please do.

A. The usual voyage, or the navigation, you run several hours and you surely will go from one side to the other. [963]

Q. Surely.

A. Either side. It is impossible to go right straight on that line. Possibly we could stay on that line. Therefore before we enter into the port we take—when we see the entrance to the breakwater clearly,

(Testimony of Syunzi Sato.)

then we start maneuvering the boat into the harbor.

Q. That is it. That is, you try to hold the theoretical course as well as you can with the means at hand?

The Court: That has been asked and answered. Gentlemen, I think we will take our recess now before we all blow up. I think everybody is tired. It has been a hard week. We will take a recess now until 10:00 o'clock Tuesday morning, gentlemen.

(Whereupon an adjournment was taken until Tuesday, September 23, 1941, at the hour of 10:00 o'clock a. m.) [964]

Los Angeles, California
Tuesday, September 23, 1941
10 A. M.

(Parties present as before with the addition of Perry G. Briney, Esq., for Intervening Libellant George W. Berger.)

Mr. Fall: We ask leave to dismiss the case of the International Broadcasting Company. We will file a written stipulation and order this afternoon.

The Court: You file a written stipulation and order to that effect.

Mr. Adams: May a minute order also be entered exonerating the bond posted in that case?

The Court: It will be all in the same order. That is the company that you represent, is it?

Mr. Fall: I represent the International Broadcasting Company.

The Court: You represent the International Broadcasting Company?

Mr. Fall: Yes, sir.

The Court: And you request a dismissal of that libel?

Mr. Fall: Yes, sir.

The Court: Your request will be granted. It will be ordered dismissed and the bond posted will be exonerated.

Mr. Fall: We have no objection at this time.

The Court: I think, gentlemen, you had better draw a [965] written order to cover it.

Mr. Adams: May I request that you incorporate in the order a provision that the bond be exonerated?

Mr. Briney: If the court please, as attorney for Berger, I would like to move the association of Mr. Fall with myself, as attorney for Berger. His claim against the radio equipment is to stand in place of the other one.

The Court: You may take the order.

You may proceed, gentlemen.

Mr. Cluff: Captain Sato was on the stand. [966]

SYUNZI SATO

recalled.

Cross-Examination

(Resumed)

Mr. Cluff: Mr. Bargion, do you have the last couple of questions?

The Court: You were asking him last about the drifting, the boat having drifted.

(Testimony of Syunzi Sato.)

Mr. Cluff: Oh, yes.

Q. Captain Sato, I think you said at the close of the hearing that your course from the fix at 6:58 (5:58) might have taken you a little to the west and east of the theoretical line which you established from that fix, but——

The Court: Wasn't it 5:58?

Mr. Cluff: What is that?

The Court: Wasn't it 5:58?

Mr. Cluff: Yes; it was 5:58.

The Court: He has already so testified. The chart shows that and he has testified.

Mr. Cluff: Very well.

The Court: I think he testified about a mile and a half.

Mr. Adams: If the court please, I believe it was only about three-quarters of a mile.

The Court: Whatever the distance is.

Mr. Adams: Yes.

Mr. Cluff: Three-quarters of a mile we measured, I think. [967]

The Court: The map shows it, because it shows the two nearly parallel lines. One line is not quite parallel, as was pointed out by the witness.

Q. By Mr. Cluff: Captain, I want to direct your attention to the moment you first sighted the "Olympic" at 7:09. On the paper that I show you let us assume that the line here is a course of 340 true and here is the "Sakito Maru" on it. Will you fix this other model in the exact position where you first saw the "Olympic"? A. At what time?

(Testimony of Syunzi Sato.)

Q. At 7:09 when you first saw it.

The Court: Did he see it at 7:09 or did both witnesses see it at the same time?

Mr. Adams: Yes, if the court please, almost immediately afterwards. Well, immediately after the lookout——

The Court: As I recall it, this witness said that his attention was called to it by the lookout.

Mr. Adams: And he immediately looked up and saw it.

The Court: Yes.

Mr. Cluff: The stop bell is logged at 7:09, and that was on his order.

Mr. Adams: I wish to object to the question upon the ground that the witness said that when he first saw the barge at 7:09 it was dim in the fog and he was unable to determine exactly how she headed.

The Court: Well, if he cannot answer the question, why, [968] that is up to him. The objection is overruled.

A. You mean the heading?

Q. By Mr. Cluff: I mean the position, first, with reference to the bow of the "Sakito Maru."

A. At that time the fog was there and I could not—I cannot give you anything positive as to the exact position of the "Olympic".

Q. All right. Then, Captain, did the mass or shape you saw bear on your starboard bow, on your port bow or right dead ahead?

A. Approximately dead ahead.

(Testimony of Syunzi Sato.)

Q. Well, you say "approximately". Was it any on the starboard bow or any on the port bow that you can say now?

A. That I do not remember definitely.

Q. At that moment you said the visibility, I think, was about 200 meters.

A. Yes.

Q. And the barge was just about 200 meters ahead, according to your best estimate?

Mr. Adams: I object to the question upon the ground it is not what the witness testified to. He said he had thought before he saw the barge that the visibility was 300 meters, but when he saw the barge he thought the barge was 200 meters ahead.

Mr. Chuff: Yes; I think you are right, I think you are right. [969]

Q. When you saw the barge you thought she was 200 meters ahead, and that is your best judgment?

A. Yes.

Q. And it was then, before you ascertained her heading or whether or not she was an anchored vessel, you rang the telegraphs to stop and full astern and put the wheel hard astarboard?

A. Yes; I gave that signal.

Q. And that was before you knew the heading?

A. What heading?

Q. The heading of the barge.

A. I knew that the heading was on the port of the "Sakito".

Q. You knew at the time you gave the hard

(Testimony of Syunzi Sato.)

astarboard helm that the "Olympic" was headed toward the "Sakito's" port side?

A. Hard astarboard?

Mr. Cluff: Will you read the question, Mr. Bargion?

(Question read by the reporter.)

A. Not positive, but I did know that it was.

Q. Very well. At the time you gave the hard astarboard helm will you place this model on the diagram here in the position that you ascertained the "Olympic" to be heading?

A. You asked me to give you the position at that time. It was in a fog so I couldn't tell you exactly what position or what shape the barge was; but I did know that it was to [970] the port of the "Sakito".

Q. That is, that she was headed to the port, or the shape of the barge was to the port?

A. The "Olympic" heading at that time was the "Sakito's" port.

Q. Now, Captain, how long after the hard astarboard helm could you definitely tell how the "Olympic" was heading?

A. Right after that.

Q. Right after that?

A. Possibly 20 seconds or 30 seconds.

Q. Possibly 20 seconds or 30 seconds. Now, when you did definitely ascertain just how she was heading, will you fix the model in the position of her heading as it seemed to be to you from the bridge about 20 or 30 seconds after 7:09?

(Testimony of Syunzi Sato.)

A. I knew that definitely, but at this time I have no definite recollection.

Q. You cannot say now whether the "Olympic" was absolutely broadside to the course of the "Sakito", or whether she was headed to the west, or whether she was headed to the southeast——

Mr. Adams: You mean at that particular moment?

Q. By Mr. Cluff: —or to the southwest?

Mr. Adams: In the chronological order of events, Mr. Cluff?

Mr. Cluff: Well, the witness, I think, understands my question, Mr. Adams. [971]

Mr. Adams: Just a minute, just a minute. If the court please, as the "Sakito" got closer to the "Olympic" yes, then he could probably see her.

The Court: He said in 20 or 30 seconds he was then able to see definitely the outlines of the "Olympic".

Mr. Adams: I don't know whether he understands the question is directed exactly to that time or not.

The Court: I think this witness is a pretty intelligent witness.

Mr. Adams: I think he is, too, but the court will appreciate that the problems of the interpretation and translation are very difficult.

The Court: I know, but this witness has been able to take care of himself pretty well. He has answered the questions very intelligently.

(Testimony of Syunzi Sato.)

Mr. Adams: I have no point in my mind other than to make sure the question is understood by the witness.

The Court: If there is any misunderstanding you can bring it out on redirect.

The Interpreter: Will you read that question?

(Question read by the reporter.)

Mr. Cluff: May I amend that question: As to whether she was headed to the northwest or the southwest? "Southeast" is ridiculous.

A. At that time I did not have a correct judgment. [972]

Q. And that was 20 or 30 seconds after the hard starboard helm? A. Yes.

Q. Now, just a moment, a moment or two before the collision, then, it was clear how she was headed, was it not, Captain?

A. You mean immediately before the impact?

Q. Immediately before, within half a minute before the impact? A. Nearly broadside.

Q. Nearly broadside. Can you tell now whether it was a little bit the stern toward the "Sakito" or the bow toward the "Sakito"?

A. No; it was practically broadside.

Q. So, according to your best estimate now, she was headed approximately 270 true?

The Court: You mean the "Olympic"?

Q. By Mr. Cluff: The barge. Just about right angles to the course of the "Sakito Maru".

A. About that; yes.

(Testimony of Syunzi Sato.)

Q. And that would be about southwest by west magnetic, wouldn't it, Captain?

A. It is very hard for me to give you any exact statement on that.

Q. But anyhow, when you were very close, within 30 seconds of the impact, she was absolutely broadside, as [973] near as you can tell now, just as you have indicated with this model?

A. Yes; about that.

Q. Will you place the model again, Captain?

A. This is only approximate now.

Q. This is only approximate.

A. At what time now are you speaking of?

Q. Any time you like up to the moment of impact, Captain, just where you are absolutely as sure as you can be.

A. Immediately before the impact it was about like that (placing model on paper).

Mr. Cluff: Let the record show the witness has placed a model. Now, Mr. Bischof, will you put your finger firmly on the same? Good. All right; both of you hold it now and I will get a line over here. All right. Now I can handle it all right. (Drawing pencil around model placed by the witness.) I will mark that "Olympic".

The Court: May I ask, isn't it the intention of the witness to demonstrate that was the relative positions of the two boats so far as distance apart was concerned?

(Testimony of Syunzi Sato.)

Mr. Cluff: I don't think so. Certainly the question was not directed to that.

The Court: That would be unfair——

Mr. Cluff: Oh, absolutely.

The Court: —to indicate that the distance between the two boats was as great as shown on the drawing. [974]

Mr. Cluff: Oh, certainly. Furthermore, I am using models of the same size, whereas the "Sakito" is twice as large as the "Olympic". There is no intention to have any idea of distance here at all.

A. The position of the "Olympic" is just a little before the impact.

Mr. Cluff: Yes.

A. Immediately before.

Q. Now, as you said, you were observing these things from the bridge?

A. Yes; I was on the bridge.

Q. And do you remember whether you were on the port or starboard wing during these times after you sighted the barge?

A. I was on the starboard wing when I saw it.

Q. You were on the starboard wing. And did you stay there up to the time of the collision?

A. No; I was not standing there.

Q. Now, did you move from one side of the bridge to the other?

A. Yes. I went to port and I went to center, back and forth.

(Testimony of Syunzi Sato.)

Q. That is, to center, that would mean going inside the wheelhouse where the quartermaster was?

A. Yes.

Q. Where were you precisely at the moment of impact? [975] Were you in the wheelhouse or on one wing or the other?

A. I think I was in the center, inside.

Q. Of course, all your estimates, Captain, are based upon your viewpoint up there on the bridge?

A. Yes.

Q. So when you say the barge was 200 meters away, you mean 200 meters from where you were?

A. That is from the stem.

Q. That is from the stem. Then, from where you were your stem is about 65 meters ahead of the bridge, isn't it?

The Court: Use feet around here so the court can follow you quickly. A. Yes.

Mr. Cluff: I wonder if you would read that question and answer, please?

(Question and answer read by the reporter.)

The Court: How many feet would that be?

Mr. Cluff: About 165 feet.

Mr. Adams: I was seeing if I didn't have it here, if the court please. 213.20 feet.

Mr. Cluff: What is that?

Mr. Adams: 213.20 feet is equivalent to 65 meters.

Mr. Cluff: I wonder if, in fairness to the witness, the evidence was not "45" instead of "65".

(Testimony of Syunzi Sato.)

Q. Captain, is the distance from the bridge to the forecastle head 65 or 45 meters? [976]

A. 65 meters.

Q. 65 meters. Captain, you spoke at the last session that just before the collision you saw another ship beyond the "Olympic" and on the "Sakito's" port bow?

A. You mean that was just a little before the impact?

Q. Just before the impact you saw another boat—not the "Olympic"—but another boat?

A. Yes; a small boat.

Q. Will you describe that boat?

A. At this time I have no recollection of that.

Q. No idea how long it was, whether it was 30 feet long or 150 feet long?

A. I have no recollection.

Q. You don't know whether it was a power boat or another barge?

The Court: What boat would that be?

Mr. Cluff: What is that?

The Court: What boat would that be?

Mr. Cluff: I am trying to find out whether it is the "Point Loma" or a water taxi or something else, Judge. I don't know what the witness has in mind.

A. It didn't appear to me to be as big as a barge.

Q. Smaller than the "Olympic"?

A. It was a small boat.

Q. Smaller than the "Olympic"?

(Testimony of Syunzi Sato.)

A. Very much smaller. [977]

Q. Very much smaller. Was it a moving boat or a boat standing still?

A. It was moving boat.

Q. A moving boat. Did it have a smokestack, funnel?

A. I don't think it did, but I haven't got a definite recollection.

Q. You were familiar, Captain, with the kind of boat we call a water taxi in Los Angeles?

A. I don't think I have ever seen one, a water taxi.

Q. The kind of boats that, when you tie up in the roadstead, you go out from the big boat and go back again?

A. I think we call that tugboat. Is that what you mean, tugboat?

Q. No; not a tugboat, a gasoline boat.

A. I know what you mean.

Q. Was it one of those?

A. Possibly it was a boat similar to that or maybe a little smaller.

Q. Do you think it could have been a tugboat, Captain?

A. No; it was not a tugboat.

Q. Now, Captain, will you take the pencil and make a little spot on the chart on the relative position as to the "Olympic" and the "Sakito Maru" where you saw that small boat just before the impact?

(Testimony of Syunzi Sato.)

A. You mean drawing of the boat itself?

Q. Well, just a mark, just a mark to show where it was. [978]

A. The first time I saw it, it was right in that neighborhood.

Mr. Cluff: The witness is indicating a circle which I will mark with a "B".

Q. How close did that boat—

The Court: How could he see a boat in that position?

Mr. Cluff: That is something that he may know, I don't.

Mr. Adams: Well, if the court please, he is 55 feet up in the air. He is looking down over the deck of the "Olympic".

The Court: I was asking that question to elicit that explanation.

Mr. Adams: Yes.

The Court: Because if it was a small boat right directly in the ray of his vision, it would seem to me, if it was that small as he described, it would not be visible.

Mr. Adams: He has indicated a rather wide area. I mean, I don't think he has testified she was alongside. He said it was in that area.

The Court: All right; you see the chart there.

Q. By Mr. Cluff: Captain, how far was that little boat from the bow of the "Olympic"?

A. It is impossible for me to tell you. That I don't know.

(Testimony of Syunzi Sato.)

Q. Could you see any water between it and the side of the "Olympic"? [979]

A. Yes; I could.

Q. You could see water. Was there as much as, oh, 30 meters of water?

A. No; I couldn't tell you whether it was around 30 or not, anything like that.

Q. Would you say that it was more than 30?

The Court: I think the witness has answered the question. He said he does not know.

Mr. Cluff: Very well.

Q. How was that little boat headed, Captain?

A. I haven't got that recollection, either.

Q. When did you first ascertain, Captain, with reference to the time that you stopped the engines and put the helm hard astarboard—when did you first be sure in your mind that the "Olympic" was an anchored vessel?

A. About 20 or 30 seconds after the first time that I saw the "Olympic" I determined that.

Q. How did you determine it, Captain?

A. I knew that it was not moving. I knew that it was an anchored ship.

Q. Well, you knew that it was not moving. Did you see the anchor chain down?

A. Yes; continuously after that I did see it.

Q. You saw the anchor chain? A. Yes.

Q. And you also heard the continuous ringing of the [980] bell, Captain?

A. No. That was when I got a little closer.

(Testimony of Syunzi Sato.)

Q. Oh, you were a little closer before you heard the bell?

A. Yes; after I moved forward a little bit.

Q. About how far were you, do you think, from the point of impact when you first heard the bell?

A. That I can't tell you.

Q. Captain, you have established, of course, before this collision the pivoting point, that is, the point in the "Sakito's" structure where she turns when her helm is put over one way or the other?

A. You mean the position of the "Sakito" or the point of the "Sakito Maru"?

Q. No; I mean the point in the "Sakito's" structure where, when you put the helm hard over, she swings so, or so, or so, or so (illustrating).

A. You mean the turning point of the ship?

Q. The turning point of the ship; yes.

A. It is a little forward from the center.

Q. A little forward of amidships? A. Yes.

Q. Just about like all ships?

A. Yes; if it is the usual structure of the ship it would.

Q. So it would be just about under the bridge, wouldn't [981] it, Captain?

A. It might be about below the bridge.

Q. Well, as a matter of fact, Captain, it was established by the naval architects on her trials, wasn't it, by meters and centimeters?

A. Yes; that was established by the shipyards.

Q. And do you know how many feet aft of the bow? A. You mean the "Sakito Maru"?

(Testimony of Syunzi Sato.)

Q. The "Sakito Maru".

A. I don't remember that.

Q. Now, Captain, on that turning point, wherever it is, when you put the wheel hard astarboard or hard aport your ship swings on that point? Just get that much of it, will you?

(Question read by the reporter.)

A. That point as the center.

Q. Right as the center?

A. As the center.

Q. So when you put the helm hard astarboard, the stern swings with the pivoting point as the center to port and the bow to starboard? A. . Yes.

Q. And that happens right away just as soon as you put the wheel over?

A. What do you mean, immediately?

Q. Within two or three seconds she begins to swing? [982]

A. You mean after the wheel is put, the helm is put to starboard or to port, or when do you mean?

Q. Right after the helm is put to starboard.

A. Surely, after the helm is put.

Q. And then, from the momentum or inertia, as you call it, it sort of goes so (illustrating), a little sideways along the original course before it begins to draw off—right?

A. When you take—as she turns, she turns in that manner after the helm is put to starboard or port.

Q. Indicating a surging along the course with

(Testimony of Syunzi Sato.)

the model. Will you do that again for the Judge? Just a moment.

Will you ask the witness, Mr. Bischof, to make the movements very slowly, just showing step by step how the ship reacts to her hard helm?

A. The helm is put to starboard or port. After that immediately it moves in that manner.

Q. Indicating a gradual curve to the right.

A. In the beginning it starts to turn very slowly after the helm is put over. [983]

Q. Yes. Now, Captain, from your handling of the ship can you tell us about how far at 6 knots an hour, or $6\frac{1}{2}$ knots an hour she will range along her course before her bow will pull off, say, 100 or 200 feet?

A. Do you mean if it's 100 or 200 feet off the course, the original course, or what do you mean by that?

Q. I mean, suppose there is an object ahead of the ship that extends 100 feet to the right of her bows, the center line of her bows, now, you put the helm hard to starboard, how far will the ship go along the original course before the bow clears that object 100 feet to the right?

A. Supposing the ship is moving along this way, do you mean how far will it go between this distance before it will go to the right?

Q. That's right, along the course, how long would it go before it would pass that object 100 feet to the right?

(Testimony of Syunzi Sato.)

A. About 300 meters, I think; over 300 meters.

Q. That would be over two lengths of the ship?

A. Yes; over two.

The Court: Then do I understand the witness' testimony to be to the effect that they would have to have seen the "Olympic" at least 300 meters away before they would have an opportunity to avoid the collision?

Mr. Cluff: Before they could avoid her. As a matter of fact to go probably 200 feet to the port of the "Olympic", if she were heading broadside, would have been a little [984] longer. I think that is the effect of this testimony.

Mr. Adams: There is one thing that isn't clear in my mind about the question. When you said an object 100 feet away from the bow of the "Sakito", I assume that you meant 100 feet from her projected course. If you had another course 100 feet away which ran parallel——

The Court: As I understand it, it is a question of the maneuverability of the "Sakito Maru", as to what distance it would take to move it one way or the other. Let me ask the witness this question: How far away would you have had to have been from the "Olympic" in order to have maneuvered your ship to have avoided it, assuming that you were at the time headed for amidships?

A. I don't understand your Honor very well.

Q. Assuming that this is the "Sakito Maru", and you sighted the "Olympic" ahead of you, and

(Testimony of Syunzi Sato.)

you were headed for its amidships, how far away from the "Olympic" would you have to be in order that you could maneuver your ship so as to avoid colliding with the "Olympic"?

A. In order to avoid that accident at 7:09 I gave the order hard to starboard; then full speed astern.

Mr. Adams: I don't think the witness understands the court in asking a hypothetical question.

The Court: I guess I will let you gentlemen ask the questions. He said 300 meters. If you have some other questions, you can bring it out on cross examination. [985]

Mr. Adams: If I may suggest that the witness be asked how much room he would need between his vessel and the "Sakito"—

The Court: Ask the question.

Q. By Mr. Adams: Captain Sato, assume that the "Sakito" approached the "Olympic" broadside, so as to hit her amidships, if the "Sakito" continued, how much room would you need, or how much distance separating the vessels would be necessary to avoid hitting the "Olympic", by putting the helm hard over? A. In order to stop the ship?

Mr. Adams: No; irrespective of anything you did with the engines.

A. Over 300 meters.

The Court: How much over?

A. Just a little; very little.

Q. By Mr. Adams: In order to bring out the full story on this point, I think the witness ought to

(Testimony of Syunzi Sato.)

be asked what difference it would make if the vessel were going at different speeds.

Mr. Cluff: You ask him if you want to.

Q. By Mr. Adams: Does the speed of the vessel have anything to do with the answer you just gave?

A. At the speed of 6 or 6½ knots.

Mr. Adams: The answer was given with reference to that speed? [986]

A. Yes.

The Court: Suppose you were going one knot and a half an hour, would your answer be any different?

A. I think it is about the same. Of course, the time would be different in that distance.

Q. By Mr. Cluff: Captain, what speed does the "Sakito" have to have before she has got even steerageway?

A. About 5 or 6 knots before she would answer.

Q. In a knot and a half she would not answer her helm at all, would she?

A. I don't say that it wouldn't be answered, but it would be more difficult than it would at the other speed.

Q. Captain, assuming you are pointing broadside at an object, and you are going 6½ knots slow ahead, and you reverse both engines, how long does it take to stop dead in the water?

Mr. Adams: May I have the question?

(Question read by the reporter.)

A. 250 or 300 meters.

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain Sato, let us get this gyro record cleared up a little bit. I am going to lead him a little bit on this, because I think it will speed up the explanation, and there is no dispute about it.

Captain, here you are going on 340 true; this little extra wiggle, at 7 o'clock, that was probably when one quartermaster left, and the other quartermaster took up? [987]

A. Yes, the time they changed.

Q. The time they changed wheels she fell off a degree or two? A. Yes.

Q. About 7:09, 7:10, she turned sharp within a minute 10 degrees to her starboard? A. Yes.

Q. And then they turned her to a heading of about 350 true? A. Yes.

Q. And then she swung back about 30 degrees to port? A. Yes.

Q. Where do you think the point of collision was? Where was the point of impact?

The Court: He has testified to that.

Q. By Mr. Cluff: Captain, after the anchor was dropped at 7:17, that would be just about here, wouldn't it?

A. Wouldn't 7:17 be about there? This scale is so small, it is very hard to get a definite point. That would be about the point.

Q. Here is what I want to clear up. Up here at about 7:30 it gets to the end of the tape, and starts back, but both going out to the end of the tape and back, that is still a swing to starboard, isn't it? Maybe we can come to this by stipulation.

(Testimony of Syunzi Sato.)

Mr. Adams: I was wondering what possible materiality that has, after 7:30. [988]

Mr. Cluff: I wanted to make it clear, so that it would not be confusing.

Mr. Adams: Change the quadrant.

Mr. Cluff: The stop is in the fourth quadrant. At this point, in approaching the end of the tape, it would swing the bow to starboard; the V is swung in the same direction, but it wouldn't be perceptible at all.

The Court: What difference would it make, after that?

Mr. Cluff: It wouldn't make any practical difference, except I wanted to make it clear, and not have it confusing.

The Court: The thing I want to know is, is there anything in that graph that would indicate the distance that this ship traveled after they changed their course, and swung over to the point of the collision.

Mr. Cluff: I think the graph is entirely too fine to get anything within a minute, from it.

The Court: Then there is no way to determine the distance?

Mr. Cluff: Nothing, but the testimony of the witness.

The Court: In other words, we haven't any mechanical device that will help us, of course?

Mr. Cluff: Mr. Black knows a great deal more about the gyro than either of us.

(Testimony of Syunzi Sato.)

The Court: The court has to rely upon the testimony of the witness?

Mr. Cluff: I think we would all agree, Mr. Black, [989] that we couldn't read that within a minute or at least a half a minute?

Mr. Black: I think even with an enlargement, that is true. It is a little easier to estimate it with a photostatic enlargement. You can take the dividers, and if you can get the middle of this line, remembering the distance between the horizontal lines is 10 minutes, you can, of course, come to a fairly close approximation, with the enlargement of it.

The Court: Is each one of these lines 10 minutes?

Mr. Black: No.

The Court: The other lines?

Mr. Black: The degree lines, 10 degrees, the vertical line.

The Court: So there is no way to determine by this graph the distance that the boat would travel after he gave it the signal?

Mr. Black: No; it does not measure distances at all. It only determines time. In other words, if the vessel were standing still, the graph would be just the same; it just shows the changes in the headings. You would have to know what the engines were doing independently, to get any distance.

The Court: This enlargement does not show any lapse of time?

(Testimony of Syunzi Sato.)

Mr. Black: It is pretty close to a minute between the [990] beginning of that swing to the end of it; it might be just a trifle more than that.

The Court: Then may I make inquiry of you gentlemen: Is there anything in the record here that determines the distance that the boat changed its course in that minute, assuming it was a minute?

Mr. Cluff: Yes; we can tell that.

Mr. Adams: We know it changed its heading 10 degrees.

Mr. Cluff: That is the heading; not the course.

The Court: The point I am getting at is this: Assuming that is the "Olympic", and this boat was approaching, the testimony is that she struck about amidships, isn't it?

Mr. Cluff: Yes. [991]

The Court: Now, if that signal had not been given, where would the impact have taken place?

Mr. Cluff: That was why I was trying so hard to get the heading.

Mr. Adams: Let us ask the witness what he thinks about it; in other words, if you had not put the helm hard over, where would the stem have struck the "Olympic"?

Mr. Cluff: Let us see if we can't bring that out. There is one more thing about the gyro, Captain. That is not exactly to the second with the ship's clock? A. No, not to the second.

Q. That is, when you set the tape, you turn the tape back or pull it forward when you retard or

(Testimony of Syunzi Sato.)

advance the time; it is like setting one clock from another, isn't it? A. Yes.

Q. It might be as much as a half a minute out?

A. It is done by hand, but I think about a minute.

Q. It might be a minute out?

A. Yes, about a minute.

Q. Captain, if you had not put the wheel hard to starboard and you had not reversed engines, but had just gone straight ahead, at what point on the "Olympic" do you think the "Sakito Maru's" bow would have hit?

A. If I hadn't given any orders at all?

Q. Any orders at all, but had just gone right ahead.

A. At that time, I couldn't tell, but after the [992] investigation, I think it would have hit a little to port.

Q. That is, a little further toward the bow?

A. No, I think about that point.

Q. Indicating the point marked by the witness with a little arrow to the port side of the figure.

A. That is only my impression.

Q. About how many feet do you think that would have been, Captain, from the point where you actually hit?

A. It is very hard for me to estimate anything like that—calculate it.

The Court: Gentlemen, the testimony is that the boat was brought down from 6½ knots an hour to

(Testimony of Syunzi Sato.)

a knot and a half an hour at the time of the impact?

Mr. Cluff: Yes.

Mr. Adams: Either a knot or a knot and a half.

Mr. Cluff: Yes, that is the testimony.

The Court: Going at one knot an hour, that would be 100 feet a minute?

Mr. Cluff: Just about, roughly.

The Court: A knot and a half would be going at 150 feet a minute; and the evidence indicates that fully a minute elapsed from the time that he gave the signal to the time of the impact; that is, the graph.

Mr. Cluff: Gave the turn of the wheel.

Mr. Black: The end of the right swing, the graph demonstrates only that much; it does not show conclusively [993] where, in that heading, the collision occurred.

Mr. Adams: There was an interval of time, before the heading started to change, that was consumed by the execution of the order.

The Court: In other words, the graph shows the result of the execution, and not the execution, so that the graph shows when the boat started to swing.

Mr. Cluff: And when it stopped.

The Court: When it started to swing; I believe the testimony is that he stated it would take about ten seconds after he gave the order before it received the effect of the order.

Mr. Adams: I don't recall exactly.

(Testimony of Syunzi Sato.)

The Court: And that the boat was actually starting its movement to starboard, at least one minute before the collision. I think that would be a fair interpretation of the graph, wouldn't it, Mr. Black?

Mr. Black: I don't think you can say the graph shows that. All it shows is that the vessel started to swing to the right about a minute before it completed its right swing and the testimony fixes the point of collision.

The Court: Let me have the enlargement. I would like to ask you gentlemen some questions for the purpose of an understanding of this testimony, to see if we agree on it. [This is the point of impact?

Mr. Cluff: That is what the master testified to. [994]

The Court: I am trying to understand this witness' testimony. This would indicate that he changed from 340 to——

Mr. Cluff: A little over 350.

The Court: That would be 5 between?

Mr. Black: Yes. These are each a degree.

The Court: So it would change to a little over 10 degrees? Does that mean that the heading of the boat had actually changed 10 degrees from this point?

Mr. Black: Yes.

Mr. Adams: That is correct.

Mr. Cluff: We all agree to that.

The Court: So that the order to execute it must

(Testimony of Syunzi Sato.)

have been given some time just before that heading was changed?

Mr. Adams: Yes.

Mr. Black: This much must be borne in mind, that the graph will show the same change of heading, whether the vessel simply swung and did not leave her track, or whether she actually left the track; in other words, it only shows a change in heading; not the change in course.

The Court: In other words, the vessel might not have left the course.

Mr. Black: The first thing is, when he puts his wheel over, the stern kicks away in the opposite direction. That would be shown almost immediately on that graph, because it shows a change of heading just as much, whether the vessel is [995] leaving the track, or not leaving the track. In other words, it would start to register just as soon as she started to pivot, even though it would be ranging along its course.

The Court: In this case we have considerable oral testimony as to the effect of the change. There is considerable oral testimony from those on the barge that the "Sakito Maru" apparently—and some testified that might have been an optical illusion—that the vessel had changed its course somewhat.

Mr. Adams: It swung to port.

Mr. Chuff: It looked as though it changed to port. Most of them testified that they saw it turn toward the barge.

(Testimony of Syunzi Sato.)

Mr. Adams: In other words, several said that they were not sure whether it was an optical illusion or not, but they testified it swung to port first.

The Court: What I am interested in is finding out, if it is possible, through these mechanical devices, to help the court determine the location. There is testimony to the effect that if the "Sakito Maru" had continued its course it would probably have not hit the barge, but that the change in the course was the cause of the collision.

Mr. Adams: Might I make a statement on that?

The Court: Yes.

Mr. Adams: I have read the transcript of these witnesses, and they stated they had the impression that she [996] swung to port, and then qualified their statement by stating that it might very well have been an optical illusion. Those witnesses who were on the "Point Loma", and on the "Clark", and on the "H-10" water taxi, alongside the "Point Loma", and who were behind the "Olympic", and therefore had the "Olympic" directly in line with the "Sakito" as she approached, all agree that they saw no change of course. Leonard Smith, under direct examination here, thought that there was a change, but on cross, after we showed him the diagram that he drew on the night of the collision, I think the evidence is clear that he thought the "Sakito" was coming straight.

Mr. Cluff: It is our position that the witness Johnson, and two or three others, testified that when

(Testimony of Syunzi Sato.)

they first saw the "Sakito" they had no apprehension of collision. Those are laymen, and don't know how a ship handles. Then they testified that she turned toward them, and they did have an apprehension. We contend that this graph shows that for at least a minute the ship was completing a very definite 10-degree swing, and she might have, in that time, proceeded two or two and a half lengths, depending entirely on the speed, and the only evidence of the speed is the objective testimony of witnesses who watched her, and the testimony of the Captain as to the speed at which she was going.

The Court: Assuming that she was going $6\frac{1}{2}$ knots an hour, a minute and a half before the collision, 7:09, in a [997] minute and a half she brought her speed down to say a knot and a half an hour. He said that it was a knot or a knot and a half an hour that she was going at the time of the impact.

Mr. Adams: That is correct.

Mr. Cluff: She could not have possibly traveled through the water over a length.

Mr. Adams: The witness testified that at the time of the impact her speed was brought down, he estimated, where she was going a knot or a knot and a half.

Mr. Cluff: Yes.

The Court: As I understand the witness it would take about two lengths of the boat to bring it to a complete stop. I am speaking from memory now.

(Testimony of Syunzi Sato.)

Mr. Adams: No, it was a length and a half or two lengths; as he later expressed it, 250 or 300 meters.

The Court: 300 meters would be 984 feet and the boat was a little over 500 feet long.

Mr. Adams: That is correct. It was 150 meters point something long. The over-all was 556 feet.

The Court: So she traveled practically her two lengths. I am going to let you gentlemen do the arithmetic in your argument. I am trying to clarify this so that I can understand the testimony better.

Mr. Cluff: At $6\frac{1}{2}$ knots she would travel about a length in a minute. [998]

Mr. Adams: We will be able to give the court a speed table, rather a distance table, showing the number of feet traveled at any given knots. I will be glad to do that right now.

The Court: The thing that impresses me is that according to the chart she traveled for a period of about one minute after the order took effect, and that in that time she diminished her speed from $6\frac{1}{2}$ knots an hour to a slow walk.

Mr. Adams: If the court please, she had a minute and a half; it might have taken a half a minute before that heading was changed. Of course, we are dealing in very fine particulars here; even Mr. Black says that you couldn't estimate with any degree of accuracy.

The Court: The testimony was that a minute and a half elapsed from the time they sighted the ship until the time of the impact.

(Testimony of Syunzi Sato.)

Mr. Adams: Yes.

The Court: At that time it was going $6\frac{1}{2}$ knots an hour.

Mr. Adams: No, he said $6\frac{1}{4}$ or $6\frac{1}{2}$.

The Court: And in a matter of a minute and a half it reduced that to about a knot or a knot and a half an hour.

Mr. Adams: That is correct.

The Court: At that time, a boat moving not over a knot and a half an hour, is only moving as fast as a slow walk.

Mr. Adams: That is right. [999]

The Court: Going at $6\frac{1}{2}$ knots an hour, how far do you say it would travel a minute?

Mr. Cluff: 650 feet.

Mr. Adams: 6 knots would be 608 feet; 7 knots would be 709 feet.

The Court: It would be about 650 feet a minute, and yet that boat would have had to have traveled another 350 feet to have stopped, going at a knot or a knot and a half an hour.

Mr. Adams: No, if the court please, I think the testimony of the witness is this: If there was no obstacle ahead; if the "Olympic" wasn't there, and if the "Sakito" was proceeding at a speed of $6\frac{1}{4}$ to $6\frac{1}{2}$ knots, and the engines were put full astern, as they were, she would have been brought to a dead stop—her headway would have been absolutely checked from 250 to 300 meters of the point where that order was executed.

(Testimony of Syunzi Sato.)

The Court: Assuming that she would have stopped in 300 meters, that means that she would have stopped in virtually 1,000 feet—984 feet, and in 650 feet she had reduced her speed from $6\frac{1}{2}$ to a knot and a half; she had reduced her speed 5 knots in two-thirds of the time, and it would take one-third to reduce it the other.

Mr. Adams: It might very well be.

Mr. Cluff: I would like to offer in evidence the diagram we have been working with here all morning. [1000]

The Court: It will be admitted.

The Clerk: "Olympic" No. 14.

B.

Olympic.
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No. <u>1138-154 alm</u>	
<i>Olympic</i>	14
SEP 23 1941	
<i>W&S</i>	

No. 10180
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
JUL 13 1942
PAUL P. O'BRIEN
CLERK

Excluded.

240

(Testimony of Syunzi Sato.)

Q. By Mr. Cluff: Captain, something at the time of the impact abruptly stopped the swing of the "Sakito", stopped the swing of the "Sakito's" bow to starboard, or, let us say, swung the stern to port. What was that, if you can tell?

A. Do you mean by that question why did it stop, the "Sakito's" stern swinging to port?

Q. And started to swinging the other way; what happened?

A. As I explained to you heretofore, after the "Sakito" hit the "Olympic", that naturally would stop the momentum of the ship, and then that would also stop the swing of the ship, and then, on account of the "Olympic" shifting, after that incident happened, because the power of the port engine was more than the starboard engine; then after that it depended on the tide and other things.

Q. But anyhow, all these things contributed to stop the swing of the stern to port, and started it swinging to starboard?

Mr. Adams: I object to that as assuming facts not in evidence. It is just the opposite of that.

Mr. Cluff: If the thing was under starboard helm.

Mr. Adams: It started to swing to starboard.

Mr. Cluff: "Stern" was the term I was using.

A. Yes, for that reason. [1001]

Q. Between 7:09 and 7:11, when the engines were reversed, the port engine made 150 revolutions and the starboard 120, according to the engine room records; that is right, isn't it? A. Yes.

(Testimony of Syunzi Sato.)

Q. Is that the reason why you think the port engine was going faster than the starboard?

Mr. Adams: Just a minute, if the court please; I object to that as assuming facts not in evidence. The witness never testified that he thought the engine was going faster. He testified that one engine turned more revolutions than the other. It is very clear that one engine might turn longer than the other.

Mr. Cluff: That is just what I wanted to bring out.

Mr. Adams: All right, but don't say that he thought that one engine was going faster than the other.

The Court: He said on the port side or the starboard side, I don't know which—on account of that, was one of the reasons for the boat swinging.

Mr. Adams: That is very correct, but he didn't say that it went faster.

Q. By Mr. Cluff: Captain, doesn't that difference simply mean that the port engine was either started earlier or stopped sooner than the starboard engine, or maybe both?

A. They stopped simultaneously; possibly at the same time; but the revolutions depend on the condition of the [1002] engines at that time.

Q. Captain, I happened to check the revolutions of the engine for the 20 hours before the collision, and I don't think in 20 hours there was a difference of 300 revolutions between the two engines.

Mr. Adams: I object to that. It is in the record.

(Testimony of Syunzi Sato.)

The Court: The court is wondering how long this cross-examination is going to last.

Mr. Cluff: I had hoped we would finish in an hour, your Honor.

The Court: I had greater hopes than that.

Mr. Cluff: I think in another half hour, if we can move along, if Mr. Adams will let the witness answer the questions.

The Court: I think you are taking up too much time in cross-examination. That is the way the court feels about it.

Mr. Cluff: If the court please——

The Court: I have made my statement. I don't care for any argument. I think you have taken up too much time, and the court is going to stop it pretty soon. You have got to get down to the point. You beat around the bush. Why don't you get down to the point? This witness knows what you are driving at a half an hour before you ask the question.

Q. By Mr. Cluff: Captain, when you stopped the swing of the stern of the "Sakito" to port, and started to swing to starboard, did the whole ship swing, or did she swing on [1003] her pivot point?

A. No, at that time the swing was different.

Q. That is, it swung on the "Olympic" as the fulcrum of the lever?

A. I think the forward part of the ship turned more.

Q. The forward part turned more?

A. Taking the center into consideration, the center of the swing.

(Testimony of Syunzi Sato.)

Q. That is, the forward part was the pivot of the swing?

A. You use the engines to swing the ship, then it turns on a center pivot but, in that case, it turns on the forward part of the ship.

Q. So it was swung more in the center of the forward part of the ship?

A. Yes, the forward part of the ship was the center.

Q. While it was making that swing, the bow was grinding into the inside of the "Olympic" to some extent, wasn't it?

A. No—yes, it swung when it entered the "Olympic", and then, with the force of it, it separated, and then swung as it was separated.

Q. I believe you testified the other day that you saw the boats separated at 7:11, when you stopped the engines?

A. Yes, I did.

Q. Who executed the order on the telegraph to stop the engines at 7:11?

A. Do you mean that sound—— [1004]

Q. Yes, on the telegraph.

A. The chief officer.

Q. Then right after that you sent the chief officer to the forecastle head?

A. Yes.

Q. But at the time that was executed, at 7:11, you could see the two ships separating, is that right?

A. No, it was after the ship had stopped that I saw them separating.

Q. After it had stopped, that is, after 7:11, a

(Testimony of Syunzi Sato.)

little after, your position was at that time inside the wheelhouse of the "Sakito"? A. I think so.

Q. How could you tell from that position in the wheelhouse that the vessels were separating a little after 7:11?

A. I was not standing there all the time. I was moving about.

Q. Where were you standing when you first saw the vessels were separating?

A. After they hit, I went to the starboard wing.

Q. As you stand on the bridge—I am showing you Yokota Exhibit 4—as you stand on the bridge, evidently, from where this photograph was taken——

A. I don't know where this picture was taken, or who took it.

Q. But that is the forecastle head of the "Sakito Maru"? [1005] A. Yes.

Q. That is about what you see when you stand on the center of the bridge and look forward, isn't it?

A. You can see more than that.

Q. You can see more than that? What part of the "Olympic" did you see when you saw them separating?

A. I was standing on the starboard wing of the bridge when I saw it.

Q. What part of the "Olympic" did you see?

A. I could see the starboard part very clearly, and, naturally, the port I couldn't see as clearly.

Q. Could you see the hole that the "Sakito's" bow had made in it?

A. No, I didn't see that.

(Testimony of Syunzi Sato.)

Q. How could you tell that they were separating?

A. I saw the movement of the ship, and I could tell by that.

Q. Did you ever stand on that lookout platform up in the bow of the "Sakito"? Did you ever stand yourself up there on the lookout platform?

A. On that day?

Q. Any time. A. Yes, I have.

Q. How high does the top of the bulwark of the bow come on your body?

A. About up to my chest. [1006]

Q. About up to your chest?

A. About in the middle of the chest.

Q. Neither the time of the collision nor the time of the sinking of the "Olympic" were entered in the deck log, or the rough log, were, they, Captain?

A. What?

Q. Neither the time of the collision, 7:10——

A. No, it was not.

Q. Neither times are in there, and those times were put in the smooth log some time that afternoon, that is true, isn't it?

A. Yes; we can do that, referring to the deck log.

Q. What is there in the deck log that tells you when the "Olympic" sank?

The Court: That speaks for itself, doesn't it, counsel?

Mr. Cluff: There is nothing here.

The Court: The exhibit speaks for itself.

(Testimony of Syunzi Sato.)

Mr. Cluff: Very well. [1007]

Q. By Mr. Cluff: After you came to anchor, Captain, how far were you from the place where the "Olympic" went down?

A. About a hundred meters.

Q. About a hundred meters. And you could watch there clearly and see the little boats around attempting rescue?

A. You mean after the "Olympic" had gone down?

Q. Yes. A. Yes; I did see it.

Q. After you got a chance to take a look around there about 7:17, did you see any other barges at anchor? A. You mean at 7:17?

Q. At 7:17.

A. No; at that time I couldn't see, did not see any.

Q. Why was that, on account of fog?

A. It was on account of fog; and furthermore, I have no recollection as to the time when I did see another boat.

Q. But later, some time later you saw two other barges, two smaller barges at anchor there?

A. Yes; I did.

Q. Your position at anchorage there was less than the length of the ship from where the "Olympic" went down?

The Court: Mr. Reporter, will you read that question?

A. As I have already testified, it was around 100 meters.

(Question and answer read by the reporter.)

(Testimony of Syunzi Sato.)

Mr. Chuff: I have no further questions. [1008]

Cross-Examination

Q. By Mr. Black: Captain, have you ever been present on the "Sakito Maru" when a test was made over an actual measured course to determine the distance within which the vessel could be brought to a full stop from slow ahead by putting the engines full astern?

A. No; I never have tested it.

Q. And is your estimate of 250 to 300 meters based on your own experience with the vessel, or from some data from the naval architect?

A. To my experience, and also the records of the ship yards.

Q. Do you have any records that show the speed curves of the vessel under various actual maneuvers?

A. I haven't got them with me now.

Q. Did you ever have a record that showed precisely that measurement?

A. Yes; I have.

Q. Why do you say a range between 250 to 300 meters if there was an exact test made giving a precise distance?

A. The records of the shipyards are when the conditions and everything are just right. At that time the ship was loaded and the conditions were different. That is why I cannot give you any exact figure.

Mr. Adams: If the court please, I wonder what the interpreter means when he says "at that time".

(Testimony of Syunzi Sato.)

I wonder [1009] what that refers to. I wonder if we can have that.

A. The time of the collision.

Mr. Black: I will ask counsel if they ever saw these records of which the witness speaks; and if so, whether they can produce them.

Mr. Adams: We do not have them with us. I have not seen them. I have been told that they are aboard the ship. I have been told that the ship is in Japan. I have never been requested heretofore for them by any counsel in the case.

Q. By Mr. Black: Just prior to sighting the "Olympic", or within the time that you were on the bridge before you saw the "Olympic", I meant to say, did you hear or see any passing steamers?

A. I didn't see anything when I saw the "Olympic".

Mr. Black: That is all.

Mr. Cluff: I have one further question, if I may.

Further Cross-Examination

Q. By Mr. Cluff: Captain, did you hear the fog horn on the breakwater prior to the collision?

A. No; I did not.

Q. Were you listening for it?

A. I didn't hear it.

Mr. Cluff: I asked him if he was consciously listening for it. [1010]

A. I was using all my efforts to try and hear that fog horn.

Q. Captain, what is the minimum visibility at

(Testimony of Syunzi Sato.)

which you continue to operate the ship in the vicinity of a harbor?

A. What do you mean by that?

Q. Is it your practice to continue to run the ship when visibility drops below 200 meters?

A. It depends on the time and the conditions, the conditions at that time.

Q. With what visibility would you continue to run, approaching within four miles of the Los Angeles breakwater?

Mr. Adams: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

The Interpreter: Would you repeat that, please?

(Question read by the reporter.)

A. I don't understand your question.

Q. By Mr. Cluff: Would you continue to run the ship within four miles of the Los Angeles breakwater if the visibility was as low as 200 meters?

A. Don't you mean by that what speed I would have the ship running?

Mr. Cluff: I don't understand his answer.

Mr. Adams: When you say "running", Mr. Cluff, that word might be a little confusing. [1011]

Q. By Mr. Cluff: Well, would you continue, if you were approaching the ship today within four miles of the Los Angeles Harbor, would you continue to run the ship or would you drop anchor?

A. If it was at 200 meters, I would reduce the speed of the ship.

(Testimony of Syunzi Sato.)

Q. You would not anchor, though?

A. It depends on the time and the conditions at that time.

Q. If your visibility were less than 200 meters, you would still continue to run under reduced speed?

A. Possibly I would stop the ship, or possibly I might drop the anchor.

Q. Now, Captain, did you have in mind that morning, the morning of the collision, that you might somewhere out there find another merchant ship that had dropped anchor on account of the fog?

A. I thought that possibly there might be one.

Q. You had that in mind? A. Surely.

Q. Now, had you made any preparations at all to drop your own anchor in case the fog got thicker?

A. Not at that time it had not been.

Q. You had not called a carpenter or sent any of the crew to the forecastle head?

The Court: Well, he has already testified to that. [1012]

Mr. Cluff: I don't think he testified to that, do you?

The Court: You asked him that before.

Mr. Cluff: Well, he said he made no preparation to drop the anchor. That is all.

Redirect Examination

Q. By Mr. Adams: Captain Sato, you testified just a moment ago that you anticipated that you might come across some vessel that had anchored there. What precautions were you taking, if any,

(Testimony of Syunzi Sato.)

to ascertain whether there was such a vessel at anchor in your course?

A. I gave a strict order for a lookout and to the lookout, and also to keep listening for the fog horns of the other ships, if there are any fog signals.

Q. What are the fog signals for a vessel that is at anchor? A. That is a bell.

Q. And if she is——

A. One bell within a minute. That means that that continuously for five or six rings.

Q. And you were listening for such signals, were you?

A. Yes; I had made the preparations that possibly we might hear a signal of that kind from another ship.

Q. Did you hear any before you sighted the "Olympic"? A. No; I did not.

Q. Just before the collision did you hear any such [1013] signal?

A. I heard the sound of a bell just before the collision.

Q. Describe that sound.

The Court: He has testified to that three or four times, counsel, that he heard the continuous ringing of the bell immediately prior to the collision.

Mr. Adams: If the court please, I wanted to develop that. That is preliminary.

Q. Prior to the collision you did hear the continuous ringing of a bell just before the impact, did you not?

A. I heard a bell ringing continuously.

(Testimony of Syunzi Sato.)

Q. Did you hear that bell clearly at that time?

A. I have no definite recollection of that, but I have a recollection that I heard some bell.

Q. Well, do you think that you would have heard that bell before you did hear it had it been ringing in that manner?

Mr. Cluff: Just a moment. I object to that question as utterly unintelligible.

The Court: It can be answered. As far as this court is concerned, it hasn't any weight what he thinks he may have heard.

Mr. Adams: If the court please, he is in a position to estimate how loudly it was ringing when he first heard it and he can estimate whether he would have heard it had [1014] he been a little further away by the sound he heard at that time.

The Court: You gentlemen all know that this negative testimony does not bear much weight, on both sides; it is true on both sides.

Mr. Adams: Of course, my point is to demonstrate, if the court please, that if the bell had been sounded hard and continuously like Ohiser said it was when the vessel seemed to turn, if that had been done before, that there would have been that warning to the "Sakito Maru" that much before.

Mr. Cluff: That is not the law. The law does not permit us to ring the bell——

Mr. Adams: There are certain rules, general precautionary rules and certain circumstances——

The Court: Gentlemen, we are not going to have

(Testimony of Syunzi Sato.)

any argument. I am not going to dwell too much in the realms of imagination.

Mr. Adams: The objection is sustained to that question?

The Court: No. I said he could answer it, but I just tell you that, as far as this court is concerned, I am letting the answer in to the benefit of any reviewing court. So far as this court is concerned it is absolutely worthless, the answer.

Mr. Adams: Would the reporter please read the question?

(Question read by the reporter.) [1015]

A. You mean from where? Where did you mean from?

Q. Well, before you did hear it, as the "Sakito" was approaching.

A. I think I would have heard that bell before I sighted, if it had been ringing, before I sighted the "Olympic".

Q. What was the direction of the wind around 7 o'clock, if you know?

A. The force was northeast—the direction. Oh, the force was one.

Q. And the direction of the wind was what?

A. Northeast.

Q. It was coming from the northeast, was it?

A. Yes.

Q. Force one.

Q. You testified, Captain Sato, that when you estimated that the barge was 200 meters ahead after you saw it, such a distance was measured from the stem of the "Sakito"?

(Testimony of Syunzi Sato.)

A. Yes; from the stem.

Q. You testified also that before you saw the barge you believed at that time that the visibility was about 300 meters?

A. No; I didn't say that. I figure that the visibility at that time was about 300 meters.

Q. And did you figure it was 300 meters from the stem?

A. That was 200 meters from the stem. [1016]

Q. Well, he estimated visibility before he saw the barge, he thought, was 300 meters. Is that measured from the stem?

A. From the stem.

Q. Is it hard or difficult to measure visibility in fog?

A. Very difficult.

Q. How do you account for the fact that before you saw the barge you thought the visibility was 300 meters, but after you saw the barge you saw it was only 200 meters ahead?

A. That is figured on the visibility of the stem of the ship and to the stern of the ship, and according to that is the way the visibility is figured, and figuring it on two lengths of the ship, I figured it to be 200 meters.

Mr. Adams: That is not an answer to the question. I wish the reporter would please read the question.

(Question read by the reporter.)

A. Looking from the bridge to the forecastle head, and then as I had seen it a little beyond the forecastle head, that was the way I came to my figures.

(Testimony of Syunzi Sato.)

Mr. Adams: That is not yet an answer to my question, Captain.

The Court: Counsel, you might explain to the court by having the witness explain to the court. As I understand it, the lookout sighted the "Olympic", his estimate was 200 meters away at the time he sighted it, and the Captain immediately sighted it and he was 265 meters away from the [1017] boat, so that the Captain's visibility must have been 265 meters at that time.

Mr. Adams: That is correct. He said he sighted——

The Court: His estimate was 300; but the lookout didn't see it, and the Captain saw it 65 meters ahead of the lookout.

Mr. Adams: No. If the court please, he said that before he sighted the barge——

The Court: I mean the visibility, according to the Captain, was 65 meters greater than the lookout's, wasn't it?

Mr. Adams: No, if the court please. Before he sighted the barge he thought the visibility was 300 meters ahead of the ship from the stem; he thought he could see that far. Then when he did see the barge he estimated that she was only 200 meters ahead of the stem.

The Court: As I understand it, he said that the estimate of visibility was 300 meters from where he stood.

Mr. Adams: From the stem.

The Court: From the stem?

(Testimony of Syunzi Sato.)

Mr. Adams: That is correct, that is correct.

Mr. Cluff: He said "200" once, and then "300".

Mr. Adams: He said when he saw the barge he estimated that the barge was 200 meters ahead. [1018]

The Court: Yes; I got that part, but I understood that he estimated the visibility at the time of his estimate was 300 meters.

Mr. Adams: Yes; before he saw the barge.

The Court: Just before he saw the barge it was his estimate it was 300 meters. That would not be 300 meters ahead of the bow, would it?

Mr. Adams: Yes. That is what I asked him just a few moments ago, if that computation was made, or estimate was made——

The Court: All right, proceed.

Mr. Adams: Now what I am trying to get at is how he accounts for the fact that he thought it was 300 meters before, but after he saw the barge he estimated it was only 200 meters ahead. Captain Sato, you still have not answered the question I asked you. I am going to reframe it.

Q. You said that before you saw the barge you thought you could see 300 meters ahead of the stem of the "Sakito"? A. Yes.

Q. But then, when the lookout shouted the warning and you saw the barge, which appeared to you dimly out of the fog, you estimated that the barge was 200 meters from the stem at that time.

A. Yes.

Q. Do you think that your prior estimate of visibility before you saw the barge was in error, or how do you account [1019] for the fact that you did not

(Testimony of Syunzi Sato.)

see the barge when you were 300 meters from the barge?

A. Possibly it is an error in my estimate, and then in the neighborhood and around the barge, possibly on account of the thick fog.

Q. Which you had not previously encountered, you mean?

A. What do you mean by that?

Q. I will withdraw the question. Do you mean that it was thicker around the barge than you had previously seen it before?

A. Yes; possibly that was the reason, too.

Q. If the "Sakito" were going ahead at slow ahead at $6\frac{1}{4}$ or $6\frac{1}{2}$ knots and the engines were put full astern do you think the "Sakito" could be brought to a stop within 300 meters?

The Interpreter: Will you give me the question again?

(Question read by the reporter.)

A. Yes; I think it would stop at 300 meters.

The Court: How long is the redirect going to continue?

Mr. Adams: I think, if the court please, about 10 or 15 minutes.

The Court: Well, we will continue right through until we finish with it.

Q. By Mr. Adams: Captain Sato, I show you a chart which is No. 5143, which contains on it some pencil notations consisting of a point or a pencil marking with a circle [1020] around it, and then several intersecting lines. What does that mark represent?

(Testimony of Syunzi Sato.)

A. That is the position of the ship after the impact and where it was anchored, the anchorage.

Q. Is this chart that you have before you now one of the charts that you had aboard the vessel at that time?

A. Yes; I did have it.

Q. Were those markings that you have just spoken of made on this chart after the bearings were taken that you mentioned?

A. Right after we had taken the bearings.

Q. And how many bearings did you take at that time?

A. This line indicates the bearing of the light-house——

The Court: Answer the question. He asked you how many bearings you took.

Q. By Mr. Adams: How many?

A. Three.

Mr. Adams: I offer this chart in evidence.

The Court: All right; "Sakito's" next number.

The Clerk: "Sakito" N.

(Testimony of Syunzi Sato.)

Mr. Adams: May I have that other chart, Mr. Wire? The other chart, if the court please, is in the clerk's office. I will endeavor to ask the witness questions about it, without the necessity of getting it.

Q. Do you remember on the other chart which is in evidence here and which was a working chart of the "Sakito"—[1021] I forget the exhibit number—that there was a mark on it indicating where the "Sakito" had anchored?

A. Yes; there is.

Q. Was that place of anchorage put on that chart after these bearings were taken that you have just mentioned in connection with this last chart?

A. That is right. After these bearings were taken then it was placed on that chart.

Q. In other words, that position was a transfer of the location that you have indicated on this chart, from this chart to that chart, is that correct?

A. Yes; that is correct. It was transferred from this chart to the other chart.

Q. And when you say "the other chart", now, you mean——

The Court: He has answered the question, counsel.

Mr. Adams: I just want the record to show that when he says "the other chart" he means "Sakito's" exhibit number——

The Clerk: K. A. Yes; that is right.

Q. By Mr. Adams: Captain Sato, you testified the other day that, from the photographs of the "Sakito" taken after the collision, it appeared that the

(Testimony of Syunzi Sato.)

stem was not bent in one direction or the other, is that true? A. Yes.

Q. In your opinion does that indicate anything with reference to whether the "Sakito" hit the "Olympic" [1022] broadside at right angles, or at angle in one direction or the other?

A. As close to right angles as possible.

Q. You were asked by Mr. Cluff concerning soundings. Why didn't you take soundings before the time that you struck the barge?

A. We knew the position of the ship at 6:00 o'clock, and at 7:00 o'clock we knew approximately what the position of the ship was, and in a big harbor like Los Angeles there is nothing dangerous, outside of the harbor, and there are no shallow spots, and rather than to take soundings, for correctness dead reckoning was much better; and in order to get them by soundings, it is very difficult.

Q. Captain Sato, if the "Sakito Maru" had not sighted the barge, and had not collided with it, when would you have sent the first officer to the forecandle head with the crew members to prepare the anchor?

A. If nothing had happened, I think that they would have gone forward to the forecandle a little after that, to make the preparation.

Q. In your opinion would that have been time enough to have sent them forward for that purpose?

A. Yes, I think that would have been enough.

Q. By the Court: Where did you expect to pick up a pilot?

A. About a half or one mile from the breakwater. [1023]

(Testimony of Syunzi Sato.)

Q. By Mr. Adams: You expected, Captain Sato, that eventually you would hear the diaphone, did you not?

A. If I had gone a little further I might have heard it. I expected to hear it.

Q. What was your plan with reference to navigation after having heard the diaphone?

A. After I heard the diaphone, if the condition of the fog was good, was all right, I would approach the entrance. If it was bad, possibly I would have stopped there, and possibly I might have backed up a little bit.

Q. You testified that after the impact the "Sak-ito" moved forward about 20 to 30 meters from the point of the impact to the point where she finally came to rest? A. Yes.

Q. How far do you believe the "Olympic" moved before she came to rest?

A. Do you mean after my ship had stopped, and the "Olympic" had moved?

Q. After your ship came to a stop, how much further did the "Olympic" move?

A. I haven't any definite recollection.

Q. Can you give us a sort of an estimate?

The Court: He says he doesn't know.

Mr. Adams: I withdraw the question.

Q. At any time prior to the collision, or even at the time of the collision, did you know what type of vessel the [1024] "Olympic" was?

A. I was not positive.

Q. What did you think it was?

(Testimony of Syunzi Sato.)

The Court: I don't care what he thinks. I want to know what he knows.

Mr. Adams: Well, the impression that she made upon him, if the court please——

The Court: I don't care what he was thinking about. I want to know what he saw. Let him tell what he saw.

Q. By Mr. Adams: Before the impact what did you see of the "Olympic"?

A. Before the collision?

Q. Yes; describe the vessel that you saw at that time.

A. I thought it was a little different to the usual boat.

Q. Had you ever seen anything like it before?

A. No, I had not.

Mr. Adams: No further questions.

Mr. Cluff: I don't think we have anything more.

The Court: Does anybody else want to ask any further questions? All right. This witness is excused. We will take the recess until 2:00 o'clock.

(Recess until 2:00 o'clock p. m. of this day.) [1025]

Afternoon Session

2 o'clock

Mr. Adams: If the court please, Mr. Fall has presented me with the original of the decree of dismissal of the livel in intervention of International Broadcasting Company and before court convened

we were in the midst of a discussion concerning the provision contained in this proposed order that each party to said action pay his own costs. There was a \$20,500 bond required in the Berger case and a \$10,000 bond required in this case which is dismissed, both covering the same equipment. I do not feel that we should have to waive our costs against the libelant in this case.

The Court: I do not see any reason why you should waive the costs, either.

Mr. Fall: Your Honor, the situation is not exactly as counsel stated. Mr. Berger had a great deal of additional equipment aside from the radio station.

The Court: I know, but the point is that you brought libel suit and now you are dismissing it and the opposite side is entitled to costs as a matter of course, isn't it?

Mr. Fall: Dismissing it for the reason that we have agreed and we have now agreed that Mr. Berger handle the suit in his name alone. Both the corporation and Mr. Berger had causes of action, separate causes of action against the "Sakito Maru" by reason of equipment that was [1026] owned by the corporation and equipment that was owned by Mr. Berger. Mr. Berger, in addition to his own equipment, brought the action for the equipment that had been assigned the corporation. There were two separate causes of action, but both——

The Court: I know, but you can only recover under your libel the property that belongs to you.

Mr. Fall: That is correct; and the International Broadcasting Company——

The Court: And any property that belongs to them, why, there is no suit pending for it.

Mr. Fall: I say, the International Broadcasting Company did own, and we contend, did own the equipment, that is, the radio station equipment. In addition to that——

The Court: Gentlemen, we are not going to take the time of this trial to argue that point out. I am not going to make any order that each side pay its own costs. If you can't agree on it I will take care of that on motion.

Mr. Adams: May we have a minute order entered for the time being dismissing the action and exonerating the bond?

The Court: I have already ordered it dismissed on the motion of counsel and exonerated the bond.

Mr. Adams: If the court please, we called Mr. Durkin to the stand—I believe it was Friday—to identify certain records.

The Court: Yes; I remember that. [1027]

Mr. Adams: Mr. Tatum, of our office, made an examination of those records, and from his notes prepared, we have compiled a typewritten exhibit. I don't know whether Mr. Cluff would wish to accept the statement from me as to what this exhibit is and the manner in which Mr. Tatum compiled it, or whether you would rather have Mr. Tatum take the stand.

Mr. Cluff: Go ahead and tell me what you are going to say and I will tell you.

Mr. Adams: Mr. Tatum examined the records which Mr. Durkin identified, and selected from the

arrivals shown in those records between May 10th and September 4th those vessels which approached Los Angeles Harbor northbound, that is, from San Diego and the Canal and other ports in that direction. He also on those various days selected the vessels which left Los Angeles Harbor southbound and has entered here on this list the name of each of those vessels, the port for which each was bound, or on the vessel's arrival here, the port of departure and the time noted in the pilot house records. Those are compiled day by day from May 10, 1940 to September the 4th.

Mr. Cluff: May I ask if you got the Australia and Honolulu bound ships, too?

Mr. Adams: No; and the reason for that was because we considered that their courses coming into Los Angeles Harbor did not bring them into Los Angeles Harbor on the [1028] courses that other vessels would follow approaching Los Angeles Harbor.

Mr. Cluff: All right; I will accept your list, whatever it contains.

Mr. Adams: Then I will offer it into evidence at this time.

Mr. Cluff: You have a copy for us, have you?

Mr. Adams: I am quite sure we have.

The Clerk: "Sakito's" Exhibit O.

Mr. Adams: I am quite sure I have the original. Just a minute, please. Before I forget about it, as the court will recall, at the time of our motion for a continuance certain statements were stipulated to, and we haven't made an offer of those records into the record up until this time, but, in

order that the record may be clear, I now offer the statements of the various witnesses, whose statements were stipulated to by the various counsel.

The Court: You might get them from the record; give the names.

Mr. Cluff: I will stipulate, so far as Hermosa is concerned, that the statements on file may be received in evidence; that is, if the witnesses were called, they would testify in accordance with the statements.

The Court: I think that is already stipulated to by all parties.

Mr. Adams: That is my understanding. I would like the [1029] record here to record that understanding.

The Court: Yes. Suppose you read the names into the record. I think you might have it deemed read, and the reporter may then write it up into the record.

Mr. Adams: That is agreeable to me, and I will read the names of the witnesses: T. Karasuda, First Engineer; A. Kanda, Apprentice Officer; H. Aono, Quartermaster; K. Nanba, Quartermaster; E. Yokoyama, Apprentice Sailor; M. Nakamura, Electrical Engineer.

The Court: They will be deemed read, the court having heretofore read them, and it is not necessary to read them aloud at this time.

Mr. Adams: And the reporter can copy them into the record?

The Court: Yes.

(Said statements are as follows:)

“ ‘Sakito Maru’—‘Olympic II’ Collision, September 4, 1940.

“Statement of T. Karasuda, First Engineer.

“T. Karasuda, First Engineer of the ‘Sakito Maru’, holds a Chief Engineer’s license and has held the same for about 12 years. He joined the ‘Sakito Maru’ in July, 1939.

“On September 4, 1940, he went on watch in the engine room at about 3:55 A. M. The men named in the statement of the Chief Engineer were on this watch and the others named came down to the engine room when the standby and slow ahead [1030] signal was received at 7:03. The Chief Engineer came down to the engine room about 6:55 A. M.

“At the time of the standby and slow ahead order at 7:03 A. M., Terasima operated the starboard engine and the First Engineer operated the port engine. These two men operated these respective engines also at 7:09 when the order was stop and full astern. At 7:11 when the order was stop, J. Hara, Junior Second Engineer, was at the port engine and K. Isii, Second Engineer, was at the starboard engine.

“After the First Engineer left the port engine following the execution of the stop and full astern orders at 7:09, he supervised the maneuvers made with reference to both engines thereafter. Hara continued to operate the port engine and Isii the starboard engine until the

vessel came to anchor at 7:19.5. Everything was in order in the engine room from 7:03 until 7:19.5 and all signals received on the telegraph were promptly executed.

“The First Engineer believes that after the stop engine order at 7:11 was executed, it probably required about 5 seconds for the reverse movement of the propellers to be checked. Prior to 7:03, while the vessel was proceeding at full ahead, the revolutions were approximately 118½. After the engines had been put at slow ahead at 7:03, the reduction to 50 revolutions, which are the number of revolutions for slow ahead, was probably reached before the elapse of 2 minutes after the execution of the slow ahead [1031] order.

“I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

“Dated: 21st October 1940.

(Signed) T. Karasuda”

“‘Sakito Maru’—‘Olympic II’ Collision, September 4, 1940.

“Statement of A. Kanda, Apprentice Officer.

“Apprentice Officer A. Kanda has attended the Kobe Nautical School but has not yet graduated. He holds no license. He joined the ‘Sakito Maru’ in May, 1940. He went on watch at 3:55 A. M. on September 4, 1940. His primary duties are to act as lookout on the bridge

and to observe the conduct of the other officers in order to learn the duties of an officer. He took the bearings mentioned in the statement of the Chief Officer under the direction of the Chief Officer, using for this purpose a shadow pin (pelorus).

“The weather was clear up to about 7 o'clock A. M. but at that time it began to become misty ahead. He called the Captain at about 7 A. M. and then returned to the bridge and continued to lookout. Pursuant to the orders of the Captain, he commenced blowing fog signals at 7:03, operating a manual handle for that purpose. He sounded a single blast of about 5 seconds duration at one minute intervals. The length of the blast and the intervals were determined by intuition and were not judged by the clock. The Chief [1032] Officer had blown two fog signals before he commenced to sound the fog signals. He believes he sounded the whistle about 5 or 6 times before the barge was sighted. In addition to sounding the fog signals, he made entries in the deck memo book of the various orders given by the Captain.

“He saw the barge ahead after hearing the lookout's warning. He does not recall how far distant the barge was when he first saw it. He blew one fog signal before the collision after sighting the barge. When he later saw the barge more clearly, he also noticed one small boat on the other side of the barge. At 7:09, when the full astern order was given on the

ship's telegraph, the Captain sounded 3 blasts on the whistle. The times which he noted in the deck memo pad for the various orders were determined from a clock on the side wall of the wheel house. He went below to be of assistance when the No. 2 lifeboat was being lowered, but then returned to the bridge and stood by for orders.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "A. Kanda"

"'Sakito Maru' — 'Olympic II' Collision, September 4, 1940.

"Statement of H. Aono, Quartermaster.

"Quartermaster H. Aono has been to sea since October, 1923, and has been aboard the 'Sakito Maru' since August, [1033] 1939.

"He went on watch at 4 o'clock A. M. on September 4, 1940, and stood his turn at the wheel from 5 A. M. to 6 A. M., steering a course of 340° true. Between 6 and 7 A. M. he made ready to hoist the flag and then returned to the bridge and stood by for orders. He took his turn at the wheel again at 7 A. M. and continued to steer a course of 340° true.

"A short time before the collision, the Captain ordered him to put the wheel hard to starboard. It requires 3½ turns on the wheel to

put the rudder over hard to starboard and he guessed that it took about 3 seconds to do this. He believed that the ship was just beginning to feel the effect of the hard to starboard recorder at the time of the collision. He was not in a position to see and did not see the barge prior to the collision. After the collision, he saw only the mast of the barge. He stayed at the wheel until after the 'Sakito Maru' came to anchor. After the collision he was ordered to return the wheel to midships and he kept the wheel to midships as the vessel backed.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "H. Aono"

" 'Sakito Maru' — 'Olympic II' Collision,
September 4, 1940.

"Statement of M. Nanba, Quartermaster. [1034]

"K. Nanba, Quartermaster, joined the 'Sakito Maru' in January, 1939.

"He went on watch on September 4, 1940, at 4 A. M. and stood his turn at the wheel from 4 to 5 A. M. and from 6 to 7 A. M. A few minutes after 7 A. M., he went to the forecastle to get some oil. He was at No. 2 hatch at the time of the collision. He did not hear any bells

or fog signals from any other vessels prior to the collision. Just prior to the collision, he saw the fishing barge from a position where he stood near the starboard side opposite No. 2 hatch. He heard the lookout on the 'Sakito Maru' yell the warning to the bridge. He also heard the fog signals of the 'Sakito Maru' sounded at regular intervals.

"The fog was not very dense when he went to the forecastle to obtain the oil. While he was at the wheel, he steered a course of 340° true.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: Oct., 21, 1940.

(Signed) "K. Nanba"

"'Sakito Maru' — 'Olympic II' Collision, September 4, 1940.

"Statement of E. Yokoyama, Apprentice Sailor.

"E. Yokoyama, Apprentice Sailor, has been to sea since December, 1939, when he joined the 'Sakito Maru'.

"Shortly after 6:30 A. M. on September 4, 1940, he [1035] went on the forecastle head to do some cleaning. When he heard the first fog signal sounded by the 'Sakito Maru', he climbed on the platform at the bow without prior in-

structions from anyone and stood lookout. He had been standing there for only a few minutes when he was relieved by S. Simada, an A. B. He then remained on the forecastle head covering up some Manila rope at the after part of the forecastle head. He did not hear any bell or whistle from any other vessel at any time before the collision.

“When he first went to work on the fore-castle head, the weather was clear. He later realized that fog was setting in, and it was about this time that he heard the first fog signal of the ‘Sakito Maru’. He is unable to estimate the distance of visibility ahead after the fog set in. He heard the fog signals of the ‘Sakito Maru’, which consisted of single long blasts at regular intervals. After the collision, he went aft to help with the lifeboat which was being lowered.

“I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

“Dated: Oct., 21, 1940.

(Signed) “E. Yokoyama”

“‘Sakito Maru’ — ‘Olympic II’ Collision,
September 4, 1940.

“Statement of M. Nakamura, Electrical Engineer.

“M. Nakamura, Electrical Engineer, holds an

Electrical [1036] Engineer's license. He joined the 'Sakito Maru' in February, 1940.

"He went down to the engine room on September 4, 1940, at 7 A. M., which was the hour that he usually reports for work. He made all entries in the signal book from 7:03 to 7:11, inclusive, with the exception of the entry made for standby at 7:03. This entry was made by Terasima because he was nearby. After this entry was made by Terasima, Nakamura took over making the entries. The time for the entries was ascertained from the engine room clock. All signals shown in the signal book were received at the times therein noted. The Third Engineer took over making entries in the signal book after 7:11 A. M.

"I have read the foregoing and the same is true and correct to the best of my knowledge and belief.

"Dated: 16th Oct. 1940.

(Signed) "M. Nakamura"

Mr. Adams: I will call Captain Arthur at this time. [1037]

FRANK D. ARTHUR

called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

The Clerk: You will state your name.

A. Frank D. Arthur.

(Testimony of Frank D. Arthur.)

Direct Examination

Q. By Mr. Adams: Captain Arthur, where do you reside? A. San Pedro.

Q. What is your present occupation?

A. Port captain for a steamship company that operates tankers.

Q. What is that company?

A. Pennsylvania Shipping Company, Philadelphia.

Q. Are you port captain at this port?

A. Port captain for the Pacific Coast district.

Q. How long have you been engaged in that particular occupation?

A. A little over four years.

Q. Have you been in this vicinity during that period of time? A. Yes, sir.

Q. What is your experience at sea, Captain Arthur?

A. I started going to sea in 1912, and got my Master's license in 1926.

Q. What license did you get in 1926? [1038]

A. Master.

Q. That is, master mariner?

A. Master mariner.

Q. It permits you to be master of any vessel of any tonnage on any ocean?

A. Any vessel on any ocean.

Q. What types of vessels have you had experience aboard, either as master, as officer, or otherwise?

(Testimony of Frank D. Arthur.)

A. On mostly all types, including sailing ships, and general cargo steamships, but the last 15 years it has been practically all tankers.

Q. How many vessels have you commanded as master?

A. Seven different ships.

Q. That has been within the last 15 years, you say?

A. Yes.

The Court: Since 1926.

Q. By Mr. Adams: What has been your experience aboard vessels on the intercoastal run?

A. I had about 7 years running intercoastal, off and on. I didn't run intercoastal all the time, but on an average of about three trips a year.

Q. By intercoastal, we mean, of course, some port on the Atlantic Coast to some port on the Pacific Coast.

A. That is right.

Q. On occasions when you have come up from the Canal aboard vessels on the intercoastal run, what course have [1039] you followed north of San Bonitas Island approaching Los Angeles Harbor?

A. 340 degrees true.

Q. On occasions when you left Los Angeles Harbor southbound, aboard some vessel, what was the course followed after leaving the entranceway of Los Angeles Harbor?

A. 160 degrees true.

Q. Where do you usually fix your position and set your course?

A. Coming north——

Q. No, leaving Los Angeles Harbor.

A. Leaving Los Angeles Harbor, right outside the harbor entrance. [1040]

(Testimony of Frank D. Arthur.)

Q. Captain Arthur, in answering these questions I am about to put to you, please assume and consider that the "Sakito Maru" obtained a fix at 9:05 a. m., September 3, 1940, and at that time had San Benito lighthouse abeam, 14 miles off; also that the vessel thereafter steered a course of 340 degrees true; also that when the southeast end of Santa Catalina Island was abeam at about 5:58 a. m., September 4th, the vessel had set over to her left from the theoretical course of 340 degrees true, plotted on her chart; based upon your experience, state whether or not in your opinion such a set might normally be expected as a probable occurrence.

A. Such is normally expected, yes.

Q. Might that set be in any direction?

A. It might be in any direction at all.

Q. From your experience, what factors would be involved in causing a vessel to be set over from her theoretical course in that manner, under those conditions?

A. It might be caused by the surface currents, by the wind, or erratic steering.

Mr. Adams: May it please the court, I have here two charts, similar to those already introduced, one of which is numbered 5101; the other of which is on a larger scale, and numbered 5143. I have drawn on those charts, and particularly on chart No. 5101, certain lines indicating the courses 340 degrees true; 160 degrees true and 162 degrees true. [1041] I have also indicated certain distances between the lines

(Testimony of Frank D. Arthur.)

that I have drawn. I can ask this witness if he has checked those courses, and confirms those distances, or if Mr. Cluff is willing, I will offer the charts with the drawings on them, for what they purport to show, subject to his right to check them himself, and then if they need any correction, to bring that up.

Mr. Cluff: I suggest that you ask the witness what questions you want to ask about the charts. I am not going to question the navigation, or the fact that you made it up first. I think that saves time.

Mr. Adams: The only questions I am going to ask this witness is whether he has checked these courses, and taken the distances I have shown on the chart.

The Court: Ask him.

Q. By Mr. Adams: I show you chart 5101, on which I have marked certain courses, and I will ask you, Captain——

The Court: What is the red line?

Mr. Adams: The red line is printed on the chart. I will ask you if you have checked those courses with parallel rules to see if they are as indicated, either 340 degrees true, where indicated, or 160 degrees true, where indicated, or 162 degrees true, where indicated. Have you done so?

A. I have checked them, and found them just the way they are marked. [1042]

Q. Have you also checked the distance between the various courses laid out, to show 340 degrees true, to show that the lines are two miles apart?

(Testimony of Frank D. Arthur.)

A. I did.

Q. And that the two outer lines are four miles apart? A. That is right.

Mr. Adams: You will recall, if the court please, that the court asked for those charts to demonstrate various courses, and the area that counsel might think was involved with respect to vessels following 340 degrees true. It is an attempt to comply with the court's desire that I have prepared these charts, and I offer the charts in evidence.

Mr. Cluff: I don't think it is evidence of anything.

The Court: It is explanatory.

Mr. Adams: It is explanatory, like a blackboard diagram would be.

Mr. Cluff: I have no objection, if you are going to have somebody testify from the chart.

Mr. Adams: This chart I am offering now is the one I mentioned as 5101.

The Clerk: "Sakito" Exhibit P.

(Testimony of Frank D. Arthur.)

Q. By Mr. Adams: I show you now another chart, which is numbered 5143, which shows the area in the immediate vicinity of Los Angeles Harbor, in greater detail than the prior chart, and ask you, Captain Arthur, if you have checked the lines set out on that chart, in pencil, to [1043] determine whether the courses are as I have indicated.

A. I have checked them, and found them just as they are indicated here on the chart.

Q. Have you also checked the distances, as shown on the chart, and found them to be true?

A. Yes.

Q. There are two lines that start at a point about midway in the entranceway to Los Angeles Harbor, and come out in the form of two sides of a triangle. One of those lines is 353 true, and one is 329 degrees true; have you checked those two angles to see if they are correct?

A. I did, and found them correct.

Q. Those two angles are the same angles, are they not, as are shown in the prior chart, taken from a point midway Los Angeles Harbor, and running out to the 100-fathom curve, is that correct?

A. They are the same.

The Court: Does this show 340 degrees true over here?

Mr. Adams: No; this one.

The Court: What is this line?

Mr. Adams: That is the printed line.

The Witness: This is 340; this is 318, 10 degrees latitude.

Testimony of Frank D. Arthur.)

The Court: Is this the printed line?

A. That is printed.

The Court: That is 340 degrees true? [1044]

A. That is 340 degrees true; this is 340 degrees true. This is in the middle, 2 miles on each side.

The Court: In other words, there is a 2-mile area in there?

A. Yes; four miles, altogether.

Mr. Adams: I might point out to the court that there is already shown on these charts which have been printed after the collision, the position of the wreck, which has been brought out in the testimony as being in the position shown on these charts.

Mr. Cluff: I will stipulate that that also shows on 5101.

Mr. Adams: That is correct.

The Court: 5101, those were printed afterward?

Mr. Adams: They are later editions.

The Court: What is the mark $8\frac{1}{2}$?

A. $8\frac{1}{2}$ is the fathom depth. All these marks indicate the depth of water, in fathoms.

The Court: That shows over the wreck that is $8\frac{1}{2}$? A. Yes.

Mr. Adams: I might state to the court that I prepared these charts, as I have said, in connection with the suggestion of the court, and I don't want to burden the record, or take the time of the court, but if the court has any questions about the courses, or the area involved, I will be glad to let the court indicate to me what those questions [1045] are, and I will try to develop the information, or I will be glad to have the court do so.

(Testimony of Frank D. Arthur.)

The Court: This map helps me with some of the problems which have been bothering me, in my own mind, because it shows a leeway of four miles on 340 degrees true.

The Witness: In coming up from the south it is practically impossible for a ship to lay a course, and over a distance of that length, 360 miles, it is practically impossible that she will make that course true all the way up, without some change in current set, one way or the other. You will probably find yourself a mile or a mile and a half or two miles on one side, or a little bit on the other side.

Q. By the Court: How long do they continue on 340?

A. They keep checking it all the time.

The Court: How long do they continue the 340 true, so as to make the harbor?

A. If you made it true it would bring you right up on the breakwater; and you wouldn't have to make a change.

The Court: Where is the breakwater?

A. The breakwater entrance.

Q. By Mr. Adams: Isn't it true, Captain Arthur, that the middle course of 340 degrees true, as shown on this chart now before you, brings you right into the entrance way to Los Angeles Harbor?

A. That is it.

Q. When you are laying your course at 340 degrees true [1046] from San Benitos Island, as you mentioned, you extend your course to bring you right into the entranceway? A. That is right.

(Testimony of Frank D. Arthur.)

Q. By the Court: And if they maintained that course true they would not hit the "Olympic", either, would they? The wreck is a little to the left of the true mark.

Mr. Adams: It would show that the wreck is—well, I will get a pair of dividers and we will estimate that. I call the court's attention to the navigating chart of the "Sakito" which is in evidence as "Sakito's" Exhibit A.

The Court: I remember the navigating chart.

Mr. Adams: The line of 340 degrees true.

The Court: That was their theoretical line that they intended to follow, and then when they made up the different checks they found by drifts or other reasons they had varied from that and they took new bearings, where you show the differences.

Mr. Adams: Yes. And that line as plotted would bring the vessel right into the entrance way to Los Angeles Harbor.

Q. Will you check the line shown at 340 degrees true, which comes to a point midway between the two lights at the entrance way there, and see how far that is from the center of the mark for the wreck which we have mentioned?

A. 400 yards. The line is 400 yards to the east of the wreck. [1047]

Q. And the wreck would be 400 yards to the westward? A. That is right.

Q. If a vessel had been set over but was still heading 340 degrees true and she was over 400 yards—

(Testimony of Frank D. Arthur.)

The Court: Oh, I think that is apparent, counsel. If they got in front of that vessel and kept on going they would hit the vessel.

Mr. Adams: I was endeavoring to bring out that vessel——

The Court: The fact that they drifted over 400 yards one way or the other, if they kept on that way they would hit the vessel because it would be in front of them.

Mr. Adams: Yes. But I was going to bring out, if the court please, that such a vessel would not be off her course as that term has been sometimes used.

The Court: I think it has been explained here by this witness, and the Captain explained — and I don't suppose there is any dispute—that the vessel drifts one way or the other. Cross-examination of counsel indicated that is a recognized condition that they have to face.

Mr. Adams: I offer this chart numbered 5143 into evidence.

The Clerk: "Sakito" Exhibit Q.

CITY

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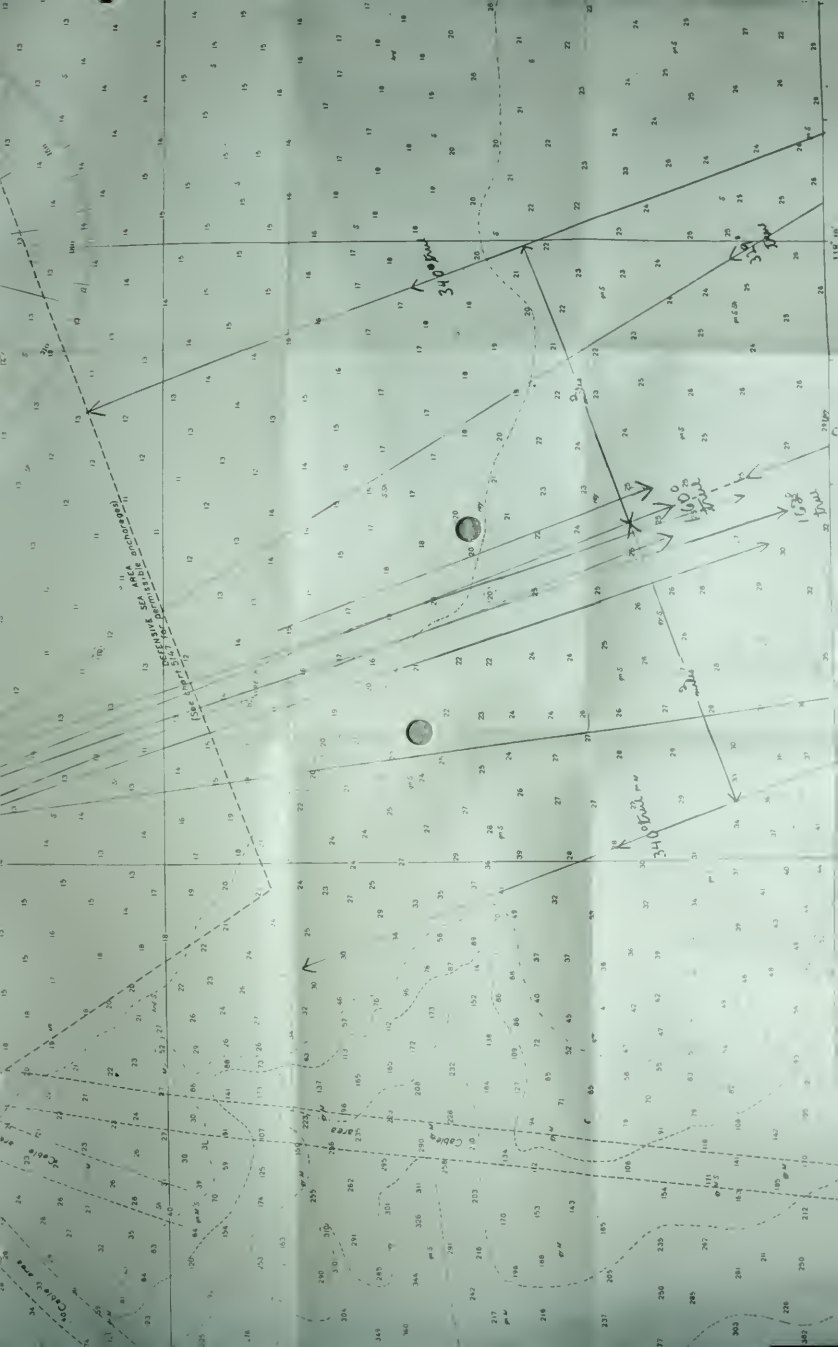
SAN PEDRO

P E R O B A Y

San Pedro Harbor

Cable area

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(Testimony of Frank D. Arthur.)

Q. By Mr. Adams: I show you "Sakito" Exhibit O. Have you previously examined that, Captain Arthur?

A. Yes, sir; I have.

Q. Captain Arthur, assume that on the various dates [1048] shown on that exhibit the various vessels therein shown entered or departed from Los Angeles Harbor; assume also that those vessels entering Los Angeles Harbor were on voyages from the Canal or other ports in that general direction, or from San Diego, all bound for Los Angeles Harbor; with respect to the vessels shown on that list as having departed from Los Angeles Harbor assume that such vessels were southbound and destined for the Canal or ports in that general direction, or San Diego; assume further that a majority of such northbound vessels approached Los Angeles Harbor on a course of 340 degrees true; assume also that most of such southbound vessels leaving Los Angeles Harbor departed on a course of 160 degrees true or 162 degrees true; assume further that the barge "Olympic" was anchored within an area of about 100 yards from a point 3.3 miles off the lighthouse at San Pedro breakwater in the direction of 159½ degrees true; based upon your experience, assuming and taking into consideration such facts, have you an opinion as to whether or not it was good seamanship under such conditions to have anchored the barge in such position?

Mr. Cluff: Just a minute. To which we object

(Testimony of Frank D. Arthur.)

upon the ground it is not a proper subject of expert testimony and no proper foundation laid, the latter, primarily in that it does not show the nature of the ground and whether this area where the "Olympic" was anchored was a fishing bank. [1049] I want to direct the court's attention to Rule 26 of the International Rules in passing on my objection.

The Court: What is Rule 26?

Mr. Cluff: That is the rule that gives a fishing boat the right of position over a moving boat. We refer to it in the trial briefs. Article 26, I think, of the International Rules.

Mr. Adams: Are you assuming fishing vessel privilege for the "Olympic"?

Mr. Cluff: What is that?

Mr. Adams: Are you asserting a fishing vessel privilege for the "Olympic"?

Mr. Cluff: I certainly shall do so.

Mr. Adams: I am prepared to argue any point of law the court wishes to hear at this time.

The Court: I am going to overrule the objection. It is a question the court will finally have to pass upon and this court won't pay much attention to experts usurping the function of the court. But as long as counsel wants to ask it, I will permit it.

Mr. Adams: I consider that, if the court please, a proper subject of——

The Court: I didn't ask for any argument. Go ahead.

Mr. Adams: Will the reporter please read the question?

(Last part of question read by the reporter.)

(Testimony of Frank D. Arthur.)

A. I have a very definite opinion. [1050]

Q. What is your opinion, Captain Arthur?

A. My opinion is that it was not good seamanship to anchor her in that position with so many ships passing back and forth.

Q. Based upon your experience, and assuming and taking into consideration the same facts, have you an opinion as to whether or not such barge anchored in such position was in a dangerous place with respect to the safety of herself, the persons and property aboard and other vessels approaching and leaving Los Angeles Harbor in the manner described?

Mr. Cluff: Same objection.

The Court: Same ruling.

A. I have an opinion.

Q. By Mr. Adams: What is your opinion in that respect?

A. My opinion is the barge was anchored in a dangerous place.

Q. Based upon your experience, and assuming and taking into consideration the same facts, have you an opinion as to whether the barge anchored in such a position under such conditions was a menace to navigation with respect to other vessels approaching or leaving Los Angeles Harbor in the manner described?

Mr. Cluff: The same objection, and the additional objection that it calls for the conclusion of the witness.

(Testimony of Frank D. Arthur.)

The Court: Well, the same ruling.

A. I have an opinion. [1051]

Q. By Mr. Adams: What is your opinion, Captain Arthur?

A. My opinion is that the barge anchored there was a definite menace to navigation, safe navigation.

Q. Captain Arthur, in answering the questions which I will next put to you, please assume and consider the following facts: The barge "Olympic II" was built of iron in Belfast, Ireland, in 1877; she was originally a 3-masted sailing vessel, but in 1934 her masts were dismantled in part so as to give her the appearance shown in "Olympic's" Exhibits 1, 2 and 3, which I will ask you to please examine. I show you now "Olympic's" 1, which is a photograph of the "Olympic", and "Olympic's" 2, which is another photograph of the "Olympic", and "Olympic's" 3, which is a blueprint drawing or drawings of the "Olympic". With respect to "Olympic's" 3 you have already examined the photostatic copy of this blueprint, have you not, Captain Arthur? A. I have.

Q. Now, please assume also the following facts: The barge was 258 feet long between perpendiculars and had a 38-foot beam; she was 22.8 feet deep; she had a gross tonnage of 1,776 tons and a net tonnage of 1,414 tons; her dead weight tonnage was 2500 to 3000 tons; 20 feet abaft her stem there was one water-tight bulkhead; this was the only water-tight bulkhead; from this bulkhead 20 feet abaft the

(Testimony of Frank D. Arthur.)

stem the lower hold of the "Olympic II" was open [1052] clear to the stern; there was carried in the lower hold, from a point even with the foremast, running to a point even with the after end of the tanks shown in "Olympic's" Exhibit No. 3, 1500 tons of ballast consisting of sand, gravel and cement blocks; at the time of the collision the draft of the "Olympic" was 16.6 feet aft and approximately 15 feet forward; the water tanks of the barge, as shown on "Olympic's" Exhibit No. 3, which had a capacity of about 97 tons, were about three-quarters full with fresh water; based on your experience, and assuming and taking into consideration such facts, have you an opinion as to the extent of the buoyancy of the "Olympic II" under those conditions if a hole were stove into her port side below the water line so as to permit the entry of sea water into the lower hold?

A. I have an opinion.

Mr. Cluff: Just a moment. To which we object on the grounds that, first, it does not show the size of the hole. I think that is sufficient to answer the whole question.

Mr. Adams: If the court please, the question does not call for any answer as to the size of the hole. Irrespective of the size of the hole, this witness can still testify as to what her buoyancy would be.

The Court: We know in this case what the extent of her buoyancy was. One minute and a half, I believe.

(Testimony of Frank D. Arthur.)

Mr. Adams: Well, I think the court is right on that. [1053]

The Court: I don't know where we need any expert testimony. We have the absolute evidence here. She went down in a hurry.

Mr. Adams: Well, if the court please, I have endeavored to supply the court with such expert testimony as I thought was material and might be helpful to the court.

The Court: Well, but as to the buoyancy, in the questions you asked if there was a pin-hole in there——

Mr. Adams: No. I asked "if there was a hole stove in her, how long she would remain afloat if the conditions were constant. That is what I asked him to assume, but not dependent upon the hole. I am asking what her buoyancy was after there was a hole punctured in her side below the water line.

Mr. Cluff: I will stipulate with you——

Mr. Adams: I am not asking that in terms of how many minutes she might remain afloat, but what was her buoyancy; what did she have to keep her afloat.

The Court: Answer the question, answer the question. It doesn't mean anything to me. It may mean something to a reviewing court. Go ahead and answer, and don't argue.

A. I have a definite opinion.

Q. By Mr. Adams: What is your opinion, Captain Arthur? [1054]

A. My opinion is that if there is a hole stove in

(Testimony of Frank D. Arthur.)

the side large enough to allow water to flow in there, that when that whole after hold gets water flowing into it she will sink before it gets full. One water-tight compartment forward 20 feet, or whatever it is, is not enough to keep her afloat.

Q. By the Court: How many would it take to keep her afloat?

Mr. Cluff: I object to the court's question on the ground the witness has not shown any qualifications.

The Court: Well, I want to find out.

A. Well, if she had a bulkhead in the middle and the front end was punctured her after end would still stay afloat.

Q. That would depend somewhat on the size of the hole, wouldn't it? These boats going back and forth to Europe, they are sinking right along and they have plenty of bulkheads in them, haven't they? A. Yes.

Q. And they are sinking right now before the crews can get off the boats? A. Yes.

Q. The bulkheads don't hold them up, do they?

A. No; the bulkheads don't.

Q. That depends somewhat on the size of the hole, doesn't it? [1055]

A. Depends on the size and somewhat on the location.

Q. Where is the most dangerous place?

A. Across the engine room.

Q. That is because of the blowout. Suppose there isn't any engine; suppose a boat like this, no

(Testimony of Frank D. Arthur.)

power there so there is no danger of blowout, wouldn't the amidship be the most dangerous place that you could cave in that ship?

A. Yes; that would weaken her more than a hole at either end.

Q. And if there was a bulkhead in the midship and she was struck amidship, that bulkhead would have been knocked out, wouldn't it?

A. Then there wouldn't be any bulkhead, but if you had two bulkheads——

Q. How many bulkheads would be required, would you think, to maintain a proper buoyancy of a vessel 258 feet long, two bulkheads?

A. My personal opinion is that two bulkheads would; but I think the bureau of local inspectors have handed down a ruling on that, that there must be a certain number of bulkheads according to size and class of the ship.

Q. They generally have two. If there were three of them, there would be one at each end and one in the center, wouldn't there?

A. That is right.

Q. If it was struck amidship the center one would be [1056] knocked out, and if the hole was big enough, the ones at each end would not amount to much, would they?

A. Well, it all depends on how close to the end they were. In a case like this, if anyone was to ask me and I was to put bulkheads in, she is 250 feet long, 258 feet, I would put one about 100 feet from the bow and 100 feet from the stern, then I think either one of those compartments would keep the

(Testimony of Frank D. Arthur.)

buoyancy, and filled with water, she wouldn't sink.

Q. I know, but one of the bulkheads——

A. One of the bulkheads, I still think one end of the vessel would float on the water. It would take her much longer to sink, at any rate.

Q. In other words, you could cut her half in two and she would still float?

A. That is possible. That has been done.

Q. Why don't you pass that on to the vessels that are going to Europe so that some of the boys would be saved?

A. There have been ships going to Europe broken in half and they have taken both halves of them and put them together.

The Court: That is all.

Q. By Mr. Adams: Captain, based upon your experience, and assuming and taking into consideration the same facts that I have outlined to you, have you an opinion as to whether or not the barge under such conditions was seaworthy [1057] with respect to the safety of herself and persons and property aboard?

Mr. Cluff: The same objection.

The Court: Same ruling.

A. In my personal opinion, she was not seaworthy.

Q. By Mr. Adams: Please assume and take into consideration, in addition to the facts I have mentioned, the further facts that a hole was stove in the port side of the "Olympic II" just forward of her main mast by the stem of the "Sakito Maru".

(Testimony of Frank D. Arthur.)

and that the stem of the "Sakito Maru" penetrated into the port side of the barge to a point about even with the keel line of the "Olympic II"; and that such hole stove in the hull of the port side of the "Olympic II" at about 16 feet in width, extending from the deck of the barge to a point approximately 7 or 8 feet below the water line; based upon your experience, and assuming and taking into consideration such facts, have you an opinion as to the buoyancy of the "Olympic II" under such conditions with such a hole stove in her port side in such a manner?

Mr. Cluff: Just a moment. Two objections there. First, the previous objection I urged; second, assuming facts not in evidence, that the hole only ran to 7 or 8 feet below the water line.

Mr. Adams: If the court please, this evidence at this stage of the game shows that by the markings on the "Sakito's" drawings of the damage. [1058]

Mr. Cluff: The "Sakito" had 24 feet draft forward, the "Olympic" was 16 feet.

Mr. Adams: The water line was just the same.

The Court: Go ahead, gentlemen. It is not worth arguing about it. It is easier to listen to it than to argue about it. We know to what extent this boat was buoyant. She went down right now. And we know it, everybody saw it and everybody knows it that had anything to do with it; and if opinion evidence is going to strengthen the facts any, why, go ahead.

Mr. Adams: Will you read the last portion of

(Testimony of Frank D. Arthur.)

the question, Mr. Reporter, please, beginning with "based upon your experience"?

(Question read by the reporter as requested.)

A. I have a definite opinion.

Q. What is your opinion?

A. That the buoyancy would be practically none at all.

Q. Captain Arthur, based upon your experience, and assuming and taking into consideration the same facts, have you an opinion as to whether or not the buoyancy of the barge would be increased had there been additional watertight bulkheads?

Mr. Cluff: Same objection.

The Court: Same ruling.

A. Yes. The buoyancy of the vessel would be improved with additional water-tight bulkheads. [1059]

Q. By Mr. Adams: You have testified that under the conditions outlined to you that it was not good seamanship to anchor the "Olympic II" in the position in which she was anchored. Does the lack of buoyancy of the "Olympic II", which you have also testified to, change your opinion in any respect with regard to whether or not it was good seamanship to anchor the barge in that position?

A. It does not change my position. It makes my opinion, after knowing the buoyancy, or lack of buoyancy, I would say it was still more dangerous to have her anchored at the position where she was in the steamer lane.

Mr. Adams: You may cross-examine.

(Testimony of Frank D. Arthur.)

Cross-Examination

Q. By Mr. Cluff: Have you made any study of the standards of either the inspectors or of the classification societies, Lloyd's, American Bureau, Bureau of Veritas, Danish Lloyd's, or any other with respect to the number of bulkheads required in a sailing vessel?

A. No; I have made no definite study of it.

Q. Do you know and can you refer us to any rule of the inspectors that requires more than one bulkhead forward in a sailing vessel?

Mr. Adams: If the court please, just a minute. That is incompetent, irrelevant and immaterial.

The Court: Overruled. You have put this man up as an [1060] expert.

Mr. Adams: That is not a sailing vessel.

The Court: Wait a minute, now. I have ruled. You have placed this man up as an expert and he is now subject to cross-examination to see what he knows.

Q. By Mr. Cluff: Have you ever had any experience with a vessel in collision that has been rammed in the side? A. No, sir.

Q. Have you had any experience with a vessel in any collision?

A. I have never been on one that was in a collision. I was always too lucky.

Q. So we can certainly congratulate you, Captain, then, you have an excellent record. So your knowledge on which your testimony here is based is not based on any particular experience of your own whatsoever, either in sail or in steam?

(Testimony of Frank D. Arthur.)

A. With practical experience as a master mariner.

Q. You haven't experienced any collisions?

A. No.

Q. Captain, if you got any such penetration with a heavy steamer, as indicated in the hypothetical questions just asked you, that is, through a vessel with a 38-foot beam, at least on her keel, about 16 feet wide, it would be bound to have a great deal of distortion of all the strength structures, wouldn't it, both forward and aft? [1061]

A. To a certain extent.

Q. That is, the iron decks and stringers would probably buckle and be distorted? A. Yes.

Q. The deck beams would be crushed out of shape and bent, or torn loose from their fastenings, is that right?

A. In the immediate vicinity of the hole.

Q. And also forward and aft for a considerable distance?

A. Yes. It depends upon how the collision occurred whether it would be enough to break any other bulkheads or not.

Q. Suppose you add to the facts that have been given to you, and assume that while that ship was in contact, the big vessel, 500 feet long, took a swing on that fulcrum of 30 degrees, you would have that bow digging back and forth in the structure, wouldn't you?

A. It would be twisting sideways.

Q. Do you think any bulkhead that was ever put into a ship would survive that experience?

(Testimony of Frank D. Arthur.)

A. Yes, I do.

Q. Captain, you have been running in and out of port here on your intercoastal runs for a number of years?

A. Yes, I have.

Q. By the way, have you a pilot's license for Los Angeles?

A. No, sir. [1062]

Q. You have come in, I take it, in all sorts of weathers?

A. That is right.

Q. In fog as well as in sunshine, in daytime as well as at night?

A. Yes.

Q. When you say that the course is 340 true from Benitos Islands, that depends very largely on your landfall there, doesn't it?

A. Do you mean on——

Q. On your starting point, on your fixed beam?

A. That is right.

Q. If you have a fix of 10 degrees, that may be 340 true, 10 miles out, outside it would be 340 degrees true, and if you came inside of Cedras, the course would be several degrees different?

A. Yes.

Q. It would be around about 325 degrees?

A. Yes.

Q. By that same token, if your landfall was 20 or 25 miles, your course would be more than 340?

A. Yes.

Q. Even if you steered a course 340, assuming that course to be absolute, where you would get your landfall off the breakwater would depend entirely upon your starting point, wouldn't it? [1063]

A. Yes.

(Testimony of Frank D. Arthur.)

Q. That is a theoretical matter? A. Yes.

Q. Under the charts which Mr. Adams has drawn, and very nice, too, I may say, you have used a beam about 4 miles wide as showing the theoretical limits of the course of 340 true. Why did you limit that to 4 miles, Captain Arthur, or did you limit it? A. I didn't.

Mr. Adams: I did the limiting, upon a statement that the court directed to both of us, in which you volunteered the information that the court might consider that the vessels would be navigating in an area of 3 or 4 miles.

Mr. Cluff: Yes, I made such a statement.

Q. As a matter of fact, if you did not get a pretty good fix, and several checks on the way up, with the drift or set, it might be a great deal more than that?

A. It might be; might be as much as 5 miles, or even more.

Q. As a matter of fact vessels have been known to pile up on the beach in a fog, on Seal Beach?

A. That is correct.

Q. In your experience in intercoastal runs did you make San Diego a port of call?

A. No, I came right up.

Q. According to your practice, which side of Cedras [1064] Island did you take, the inside or outside? A. The outside.

Q. Did you get your landfall on the Benitos for your final shoot for setting for a course for San Pedro? A. That is right.

(Testimony of Frank D. Arthur.)

Q. The course is generally 340 true?

A. That is right.

Q. That would carry you, if made good, just as far as the breakwater entrance? A. Yes.

Q. Do you adopt any different practices, Captain, in fog?

A. No. Do you mean if it is foggy between Benitos——

Q. No, I mean, as you approach Los Angeles, let us say, after you get the Catalina Island lights abeam, suppose you get into fog, within the next hour before you made a landfall, when you ran into that fog, would you, as a matter of seamanship, continue to bull right ahead on a theoretical heading of 340 true, or change your course?

A. It depends on the circumstances. If I felt she made the course, that it had been made good on there, I would feel my way along toward the harbor entrance.

Q. With that situation would you still hold on your theoretical course of 340 true?

A. Yes; I would checkup as I went along, as well as I could, with soundings, to see that I didn't get onto the [1065] beach.

Q. As soon as you got soundings, you would check the dead reckoning with the soundings?

A. Yes.

Q. And you would follow the directions of the Coast Pilot in foggy weather, would you—would you follow those directions, Captain, or not?

(Testimony of Frank D. Arthur.)

A. Just what directions?

Q. I am reading from page 28 of the Coast Pilot, edition of 1934. You are familiar with the standard course laid down for coastwide navigation? I am calling your attention to just a part of course 323.2, of the passage between Point Loma and Los Angeles Harbor. Are you familiar with that?

A. Yes. That is $3\frac{2}{8}$ ths miles off, coming up from San Diego. You don't run it coming from Benitos Island.

Q. I realize that. I am reading from page 28: "If uncertain of the position in approaching San Pedro Bay, steer so as to make sure of being to the eastward of the Point Firmin Breakwater. Continue to a depth of 10 fathoms, and then haul to the westward in that depth, and the fog signal will be made without difficulty." That is a good direction, isn't it?

A. Yes, it seems all right.

Q. If you were bringing your ship in about 4 or 5 miles off the breakwater, off the harbor, and you encountered fog, which [1066] cut your visibility down to 300 meters, or about 1,000 feet, it would be pretty good seamanship to at once bear off to the eastward until you picked up the 10 fathom curve, wouldn't it?

A. If I was within 3 or 4 miles of the breakwater, and knew I was there, I wouldn't have to go and look for the 10 fathom curve.

Q. I am assuming you were within 4 or 5 miles

(Testimony of Frank D. Arthur.)

of the breakwater, on dead reckoning, and if you did not know whether you had made the course 340 true good or not?

Mr. Adams: I think the question is unfair in that it doesn't inform the witness of the last position of fix. If the fix had been obtained an hour before, the circumstances might have been entirely different. [1067]

Q. By Mr. Cluff: Let us assume that the fix had been obtained an hour before, off the Catalina Island, established from a point with the south point light abeam, and that you had proceeded in clear weather until 7 o'clock, at which time fog was seen ahead of you, and at 7:03 you are in fog so that you slowed down, and you started your whistles as you proceeded, and as you proceeded on a course of 340 true the fog was thickening very rapidly, so that three or four minutes later the visibility was down to about 1000 feet; you had had no soundings or no sights since your fix an hour before;—now, would you say it was good seamanship to go right ahead, or follow the directions of the Coast Pilot, and work over to the eastward until you struck your 10-fathom curve?

Mr. Adams: I object to that as assuming facts not in evidence, incompetent, irrelevant and immaterial, and beyond the scope of the direct examination.

The Court: Objection overruled.

A. In that case, if I had a fix an hour before,

(Testimony of Frank D. Arthur.)

I would just keep feeling my way on up to the break-water.

The Court: What do you mean by feeling your way?

A. Go slow, or stop and listen, and keep on going a little more, feeling as I went along.

Q. How fast do you travel when you say you feel your way?

A. Two or three knots an hour at the most, maybe stopped [1068] most of the time.

Q. In other words, it is dangerous to proceed under those circumstances?

A. That's right. You must keep your ship under control at all times.

Q. Would you say that six knots an hour would be pretty fast under those circumstances?

A. I would, yes.

Mr. Adams: I don't think the witness, again, has been informed of the full circumstances, with due respect to the court's question, and I object to it upon the ground that there is no proper foundation laid for that question, and that it calls for the conclusion of the witness.

The Court: You have put an expert on here, and the court wants the benefit of his expert knowledge, the same as the defendant.

Mr. Adams: I am frank to say that was why I called an expert, because I wanted the court to have the benefit of a practical navigator.

The Court: I will give you an opportunity to

(Testimony of Frank D. Arthur.)

examine him, and go into any additional suppositions you want.

Q. By Mr. Cluff: Captain, I take it, in the course of your coastwise experience, you are pretty much familiar with the fishing grounds, and places where fishing vessels habitually either anchor and fish, or drift and fish, up and down the coast between San Francisco and—— [1069]

The Court: We are only interested in this one place.

Mr. Cluff: Let us say between Catalina Island and Los Angeles. A. Yes.

Q. You have noticed, of course, out in the area which has been chartered, that is, about where the wreck of the "Olympic" is now marked on the chart, you have noticed for many years that that is a very populous fishing ground practically all the year around? A. Yes.

Mr. Adams: I object to that upon the ground that it assumes facts not in evidence.

The Court: He is asking him if he knows.

Q. The answer is yes?

A. I know there are always fishing boats in that vicinity.

Q. By the Court: How long have you known that?

A. Since I have been running out there, since 1930.

Q. There have always been barges out there all that time, haven't there? A. Yes; I think so.

(Testimony of Frank D. Arthur.)

Q. By Mr. Cluff: You have known several barges to be in and about that same area for several years? A. That's right.

The Court: Have you always considered those barges dangerous to navigation?

A. Yes, sir; I have considered them a general nuisance. [1070]

Q. By Mr. Cluff: That's just the point, you navigators who are engaged in navigating vessels, consider a fishing boat a nuisance?

A. No; it all depends upon where the fishing boat is.

Q. If they go out and lay somewhere in your course, you have to keep awake, and go around them?

A. Then they are a nuisance.

Q. Another nuisance is that the law makes you go around it, too, isn't it?

The Court: That is argumentative.

A. I don't know whether there is a law that covers fishing boats anchored out to sea.

Q. Mr. Cluff: I won't argue the law with you.

The Court: It is good seamanship to go around it?

A. They are not permitted to enter any channel. There is no well-defined channel there, and inside inland waters they are not permitted.

Q. By Mr. Cluff: Where the "Olympic" was, there was 10 miles of water on each side of her, wasn't there? A. Yes.

Mr. Adams: That is obvious. I am not arguing about the open sea.

(Testimony of Frank D. Arthur.)

Q. By Mr. Cluff: Any navigator then, whether they are a nuisance or not, every navigator on the coast must expect, any time he is within sounding there, that probably there will be fishing vessels in his course? [1071]

A. You expect them almost any place.

Q. Of course, a fishing vessel only fishes off sounds; you don't find them out trolling for sardines in the deep ocean?

A. Yes; they fish tuna 3000 miles out in the Pacific, with no bottom.

Mr. Cluff: We will except tuna.

The Court: It has been more or less of a notorious fact among the navigators, that have occasion to use San Pedro Harbor, that these fishing barges are present there, hasn't it? A. Yes.

Mr. Adams: If the court please, with due respect to the court, I object to the question upon the ground that no proper foundation has been laid, and that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Adams: And I move that the answer be stricken for the same reason.

The Court: Same ruling; denied.

Mr. Cluff: Has the court finished?

The Court: I think that is all. Proceed.

Q. By Mr. Cluff: Captain, just one other question. When you are running on soundings, within a few miles of the harbor, in addition to the possibil-

(Testimony of Frank D. Arthur.)

ity of fishing vessels, there is also the possibility, if it is foggy, [1072] that some prudent or cautious navigator has anchored his vessel until the weather clears, and you have got to look out for that, too?

A. That's right.

Q. The closer you get to the harbor, the more that hazard increases? A. Yes.

Q. Would you call approaching in fog, where you could not see much more than a ship's length and a half, or two ship's lengths ahead, with the visibility getting less all the time—would you think it was good seamanship to approach the harbor at six and a half knots an hour, without having your mate and the carpenter on the forecastle head and ready to drop anchor at a few moments' notice, if anything came in front of you?

Mr. Adams: I object upon the ground that no foundation has been laid, and that it calls for a conclusion of the witness.

The Court: The same ruling. You laid the foundation yourself.

Mr. Adams: This question does not even inform the witness as to what type vessel he is on, or what the reverse speed is.

The Court: The witness has been qualified. You tried to get by, without defining the size of the hole in the vessel. [1073]

Mr. Adams: I don't think that situation is analogous.

A. What is the question?

(Question read by the reporter.)

(Testimony of Frank D. Arthur.)

A. I wouldn't exactly consider it necessary to have the mate and the carpenter standing by unless I was going to anchor. I wouldn't anchor until I arrived at a safe anchorage.

Q. And you wouldn't run, Captain, unless you could stop well within your visibility?

The Court: That question has been asked and answered, counsel.

Mr. Cluff: Very well. I have no further questions.

Redirect Examination

Q. By Mr. Adams: Captain Arthur, when you made mention of the fact that if you were proceeding in fog approaching Los Angeles Harbor, you would feel your way along, did you mean that as you approached Los Angeles Harbor in fog and had no aids to navigation visible, that you would feel your way along, trying to pick up the diaphone?

A. That's right.

Q. After you picked up the diaphone, what would dictate your action from that point on?

A. If it stayed thick, I would get up under the lee of the breakwater, southeast of the entrance, and anchor. That would be out of the way of shipping, and I would stay [1074] there until it cleared up, enough to go in.

Q. When you spoke of the speed at which you would travel under certain circumstances that you were asked about, did you have reference to the speed that you traveled aboard your ship?

(Testimony of Frank D. Arthur.)

A. That's right.

Q. You have never been aboard the "Sakito Maru", have you? A. No, sir.

The Court: How large are you referring to?

A. 10,000-ton ship, the average speed,—they are old ships—is 10 or 15 knots, the best speed.

The Court: How long are they?

A. 450 feet.

Q. By Mr. Adams: You are not acquainted with the engines in the "Sakito Maru"?

A. No, sir.

Q. Nor her reversing power?

A. No; I know nothing about her whatsoever.

Q. You stated that you became acquainted with the fact that there were barges anchored in the vicinity in which the "Olympic" was anchored, is that correct? A. Yes.

Q. That is, while you were on the intercoastal run? A. Yes, sir.

Q. Even after you knew that those barges were located there, did you have an experience in fog which, the [1075] parlance of the street, amounted to a close shave, in reference to those barges?

A. I did.

Q. Will you explain what happened?

Mr. Cluff: To which we object upon the ground that it is incompetent, irrelevant and immaterial.

Mr. Adams: There has been a lot gone into——

Mr. Cluff: You called me for reminiscing the other day, and we can go into stuff for the last 20

(Testimony of Frank D. Arthur.)

years, which I do not believe would enlighten the court.

The Court: We are not trying this navigator; we are not trying him.

Mr. Adams: No, but, if the court please, the statement is made that if they see these barges there, they can go around them, and it overlooks the fact that if you are traveling in fog you can't see the barges. I am endeavoring to demonstrate, that here is a man who became acquainted with the fact that the barges were there, and when he was in fog, and couldn't see them, he had a close shave.

The Court: That is probably why he has given the testimony that he has given, that he creeps in, and feels his way. I am going to sustain the objection. I don't feel that because he came close to an accident, at some time or other, that it either adds or detracts from this case.

Mr. Adams: May I, for the purpose of the record, state what I intend to prove? [1076]

The Court: You made the statement.

Mr. Adams: May I state my offer in substance is along the line that I stated?

The Court: Yes.

Q. By Mr. Adams: Do you remember when it was, Captain Arthur, that you first came to Los Angeles Harbor on the intercoastal run?

A. In 1930.

Q. Did you know before you arrived in Los Angeles Harbor on that occasion that there were barges anchored in this Horseshoe Kelp area?

(Testimony of Frank D. Arthur.)

A. No, sir, I did not.

Q. How did you learn?

The Court: Did you learn it on the first occasion?

A. I saw them the first time I came here.

Q. By Mr. Adams: You saw them on that occasion?

A. Yes.

Q. Then you continued to make runs at more or less regular intervals, as I understand it?

A. That's right.

Q. As you came and left Los Angeles Harbor on these subsequent trips, you continued to see barges in the same location?

A. Yes.

Q. Is that what led you to know that these barges were there more or less permanently? [1077]

A. That's right.

Q. Did you find that there were certain seasons of the year they were there, and certain seasons when they were not there?

A. I never took notice of it. I just took it for granted that they were there.

Q. After you learned that the barges were in that location, Captain, as you approached Los Angeles on these various vessels, did you pass those barges on only one side in particular, or might you not, on different occasions, pass on one side, and on another occasion the other side?

A. I might pass on either side.

Q. What would be the situation with respect to leaving Los Angeles Harbor to passing these barges?

(Testimony of Frank D. Arthur.)

A. We could do the same, pass on either side, but I would customarily pass outside of them.

Q. That would be to the westward?

A. Yes.

Mr. Adams: No further questions.

Recross-Examination

Q. By Mr. Cluff: You said in foggy weather, where it was very thick, as you approached the breakwater, you would lie in the lee of the breakwater. Did you mean the west breakwater, or the new breakwater in Long Beach?

A. Yes; where the new breakwater is now; I would lie [1078] southeast of the entrance.

Q. So, if your theoretical approach was some place to the west of the entrance, you wouldn't lie there then in the path of anything coming in from Point Firmin?

A. That's right; I would get out of the road.

Q. Which would be to the eastward so that you would get out of the way of anything?

A. Yes.

Mr. Cluff: That is all.

(Short recess.)

Mr. Adams: May it please the court, I would like to explain one feature in connection with the comment the court has made during the course of the trial with respect to the divers who went down and examined the wreck after the "Olympic" sank.

The Court: I did not make any comment relative to that.

Mr. Adams: Yes; as I recall, the court stated that he thought the divers, if brought into court, could testify as to the hole made in the side of the "Olympic".

The Court: If they had ascertained that, I did not know.

Mr. Adams: In any event, we interviewed the diver, and found that instead of only one, there were three, and we found that two of them did not know anything about it; that they were working on the bow anchor and the stern anchor, and we had thought there was a diver's report, and [1079] we thought that it would be introduced as a part of the libelants' case. The third diver, we found, said that he knew something about it, and Mr. Cluff and I have discussed the matter, and I think probably maybe the two of us can interview that diver together, and perhaps prepare a statement that we are both satisfied with, and offer it as a part of the record in the case; so if the court would care to receive that testimony——

The Court: The only thing is, as I have commented before, it seems to me that it is material in this case to show the size of that hole in the side of that vessel. I think it not only goes to the question of whether or not, if the "Olympic" had complied with the regulations of the Department of Commerce, whether or not the buoyancy of that boat would have been sufficient to have given the people an opportunity to get off of it, but I am frank to say

that it seems inconceivable to me that a boat going a knot or a knot and a half an hour could cut into this iron ship, and do the damage the "Sakito Maru" did. How that could happen, going at that speed, is just beyond me. I am telling you frankly how I am thinking, and for that reason I think that the size of that hole, and the nature of it, has some material value.

Mr. Cluff: I join in Mr. Adams' suggestion.

The Court: Of course, on the other hand, we have the testimony of the Captain, and I presume the libelant is [1080] going to have a surveyor's report here, that will give us the same information, because the diver undoubtedly could not go all over that hole, to see the size of it.

Mr. Cluff: We have been trying to get hold of this diver, your Honor. It is my understanding that the water was so muddy that the divers couldn't report anything.

Mr. Adams: This diver I have reference to was sent down to dynamite the masts, and to break up the wreck, and in doing that work he was required to work on the deck of the wreck, and he stated, in working around the masts, which, of course, are located in the center of the ship, it is his recollection that the hole stove in the port side did not extend to the center line of the ship.

Mr. Cluff: That would knock the mast right out of her.

Mr. Adams: I am not arguing the case.

Mr. Cluff: Let us go down tonight, and we will get a stenographer, and get a statement from him. I understand from Mr. Adams this man is working on a diving job, where if he quits, then the whole crew will be thrown out of work. I will go down with him, and get a statement or a deposition or something.

Mr. Adams: I would just as soon do it, but I don't know that it has to be done tonight, unless the court so desires.

The Court: Gentlemen, I am anxious to get the evidence in, and I am anxious to get the briefs in. There are a [1081] lot of people that are directly interested in this litigation, and I think it should be cleared up as expeditiously as possible.

Mr. Adams: We rest our case in chief, if the court please, right now.

Mr. Cluff: Shall we go down and see the diver tonight, Mr. Adams?

Mr. Adams: I don't know that it is necessary that we should go tonight.

The Court: I don't think it makes any difference whether you go today or tomorrow.

Mr. Cluff: Let us say some time this week?

Mr. Adams: Yes.

Mr. Cluff: I have a couple of stipulations. I understand, Mr. Adams, that it will be stipulated that if the person in charge of the records at the pilot station near the breakwater were called as a witness, he would testify that the records of the pilot

station show the following: That on July 16, 1940, the "Sakito Maru" passed the breakwater light southbound at 6:57 p. m.; the visibility was good, with a clear sky, and northwest wind. The weather observations, which were taken periodically at the pilot house, were as of 5 o'clock p. m. Sunset occurred at 7:05.

Mr. Adams: So stipulated.

Mr. Cluff: Also that the witness would testify that the records of the pilot station show that on April 19th, [1082] the "Sakito" passed in northbound from the Canal, at the breakwater light at 11:30 a. m.; sky overcast, visibility good; west wind.

Mr. Adams: And the observation at 5 a. m. to the effect that the visibility was poor, with light fog, overcast sky, wind north.

Mr. Cluff: I will stipulate that the record so shows, subject to materiality. Mr. Adams, I want to invite one other stipulation, which I haven't discussed with you: [1083] That is, that Mr. Judd, who is the owner of both the "Point Loma" and the "Rainbow", that if called as a witness, would testify from his records that the "Rainbow", that is, the "Samar", was anchored on the banks on March 16, 1940, and the "Point Loma" on or about April 6, 1940. He fixes both of those dates, because those dates represent the first receipts that came in from the passengers on the barge. Mr. Judd verifies that from his records. I invite a stipulation from you that if called he would so testify.

Mr. Adams: Will you stipulate that Mr. Judd, if called, would testify that the fog was definitely in layers?

Mr. Cluff: If you are going into that, I can't, and I withdraw my request.

Mr. Adams: I have certain facts that Mr. Judd would testify to which I would like to get into the record.

Mr. Cluff: I would not call him as a fact witness, because I thought we had enough, but if you are going into all he testified to before the A Board, let us get him here.

Mr. Adams: I rested my case in chief.

Mr. Cluff: Do you decline to stipulate?

Mr. Adams: Yes, unless you want to include other matter which I consider material.

Mr. Cluff: I would like to offer formally in evidence page 28 of the Coast Pilot, as I read to the reporter there, in the examination of Mr. Arthur.

Mr. Adams: If the court please, I don't think it is [1084] necessary to make that part of the record. I think the court can refer to a document like that, and if there is any materiality at all, it is a matter counsel would raise in the argument.

Mr. Cluff: I make the offer.

Mr. Adams: I object to that particular portion.

The Court: What is the objection?

Mr. Adams: I object upon the ground that it is incompetent, irrelevant and immaterial.

The Court: I don't know whether it is material or not. I will receive it, subject to a motion to strike; if you have any citations where it is not material, a motion to strike will be entertained.

Mr. Adams: I move at this time to strike it upon the ground that the respondent is not charged with knowledge of anything that is contained within the covers of that book, and if it is not charged with knowledge, what materiality can it have?

The Court: The motion will be submitted, which is the same position we were in before.

Mr. Cluff: I would like to offer a Certificate of Inspection of the "Olympic II" for 1938. That is on the issue of general seaworthiness, and I want to simply show that she passed inspection in 1938, and there is testimony that her structure was not changed since that time.

Mr. Adams: I won't offer an objection to the use of [1085] the certificate, as a copy, or anything along that line, but I do object upon the ground that it is incompetent, irrelevant and immaterial, being too remote in time to show anything concerning her condition at the time of the collision, and, furthermore, that the certificate itself is no proof of seaworthiness.

Mr. Cluff: There has been a great deal of talk about it.

The Court: I will admit it for what it is worth.

The Clerk: Exhibit No. 15.

EXHIBIT 15.

Form 856

[May 1937]

File No. V4472

This Certificate Expires April 4, 1939

UNITED STATES OF AMERICA

Department of Commerce

Bureau of Marine Inspection and Navigation

CERTIFICATE OF INSPECTION

For Seagoing Barges of 100 Gross Tons or Over

(Authority: Act of Congress approved May 28, 1908)

State of California

District of Los Angeles

Name of Barge Olympic II

The undersigned, Inspectors for this District, Do Certify that, in accordance with the provisions of an act of Congress approved May 28, 1908, and the Rules and Regulations of the Board of Supervising Inspectors, on the fourth day of April, 1938 at Los Angeles, in the State of California, they completed the inspection of the seagoing barge named Olympic II, of 1,766 gross tons; home port San Francisco, in the State of California; hull constructed of iron; whereof Hermosa Amusement Corporation is owner, and J. M. Andersen is master; that said vessel is of a structure suitable for the service in which she is to be employed and is equipped with one donkey or

auxiliary boilers built of tested material in the year (no record), has suitable accommodations for the crew, is in a condition to warrant the belief that she may be used in navigation with safety to life, and is permitted to navigate the waters of Pacific Ocean, Coastwise, between San Diego and Santa Barbara with no passengers on board for 1 year from the date of said inspection.

Included in the entire crew there must be 2 certificated lifeboat men.

Officers and Crew Required

Being (illegible)

Master	1
Mate	2
Cert. able seamen.....	2
Steward's & other dept. when needed.....	4
<hr/>	
Total	9

Life-Saving Equipment Required

Metal lifeboats	—
Wooden lifeboats	1
Collapsible lifeboats	—
Life preservers for officers and crew	
(adult)	308
Children's	30

Additional Equipment Required

Anchors	3
Anchor cables	2

Boilers

Diameter No Record

Length ----- —

Shell thickness ----- —

Hydrostatic test, lb-----120

Max. allowable pressure, lb----- 80

When at anchor is allowed to have 300 passengers on board, and is required to carry 1 licensed master, 2 certificated able seamen, 1 watchman, and when needed 4 persons in the Steward's department.

JOSEPH J. MEANY

Inspector of Hulls.

JOSEPH A. MOODY

Inspector of Boilers.

State of California

Port of Los Angeles—ss.

Subscribed and sworn to before me this 8th day of April, 1938 by Joseph J. Meany, Inspector of Hulls, and by Joseph A. Moody Inspector of Boilers.

CARL O. METCALF

Deputy Collector of Customs.

Office of U. S. Local Inspectors

District of (Port) Los Angeles, Calif., April 8, 1938

We Hereby Certify that the above certificate is a true copy of the original issued by this office to the vessel named herein.

JOSEPH J. MEANY

Inspector of Hulls.

JOSEPH A. MOODY

Inspector of Boilers.

The original Certificate must be framed under glass and posted in a conspicuous place in the vessel

11—2824

Mr. Cluff: I find myself chagrined that I am running out of witnesses. I had three which I was counting on tomorrow; one is a coast guard officer, and his ship is in drydock, and he could not be here. I have one witness I can put on. [1086]

ALBERT C. WILVER

called as a witness on behalf of the libelants in rebuttal, being first duly sworn, testified as follows:

The Clerk: You will state your name.

A. Albert C. Wilver.

Direct Examination

Q. By Mr. Cluff: Captain Wilver, will you tell the court your experience quite briefly, as a ship's officer?

A. I started to go to sea as an apprentice, and served my apprenticeship in sailing vessels. Upon the completion of serving my apprenticeship, I became an officer in sailing vessels, and subsequently commanded sailing vessels, and subsequently commanded steamers; and during the last war I did a tour of duty in the Navy. I entered as ensign, and came out as a lieutenant commander; and dur-

(Testimony of Albert C. Wilver.)

ing which time I commanded transports, and one school ship, one gunboat, and some troop transports. I went back to my old love, sailing ships, after the completion of the war, and sailed them, and at that time I owned several sailing vessels. Since about 1925 I came ashore in the capacity as a marine surveyor, working mainly for insurance companies, and one time I was a member of a firm, a partnership, which represented the classification society.

Q. That was the "Navigation Bureau of Veritas"? A. Yes. [1087]

Q. A member of Lloyd's? A. Yes.

Q. Captain, have you also, in the course of your experience, been engaged in the business of salvaging vessels? A. Yes.

Q. You were at one time working for Merritt, Chapman & Scott, the well-known salvage firm?

A. Yes, sir.

Q. In your private practice, you have been, for a number of years, and are now, engaged more or less constantly in being the doctor and undertaker of vessels that have been in difficulty?

A. Yes. I might mention that I was president of the Pacific Towboat Company here, engaged solely in salvaging and towing.

Q. You at one time, I believe, were second mate of the "Star of Italy"? A. Yes.

Q. Which is a sister ship to the "Olympic" which we are talking about here?

A. Exactly the same ship.

(Testimony of Albert C. Wilver.)

Q. Built in the same molds?

A. Exactly alike.

Q. Of the same dimensions?

A. Yes. [1088]

Q. Captain, you have sailed in a great many sailing vessels as seaman, officer and master?

A. Any number of them.

Q. As to bulkheads in sailing vessels, will you state what number of bulkheads the majority of sailing vessels have?

Mr. Adams: That is objected to as incompetent, irrelevant and immaterial. It depends upon what trade the vessel is in at the time.

Mr. Cluff: Suppose you let the witness testify.

Mr. Adams: I am making the objection.

The Court: State your point.

Mr. Adams: My point is, if the court please, that it is not material as to the bulkheads necessary in sailing ships engaged in the trade, in which a sailing ship might be engaged. The question before the court is what is the number of bulkheads that are necessary in the "Olympic", anchored in the position in which she was, and engaged in the trade in which she was.

Mr. Cluff: I find it difficult to follow how a barge can sink as quickly as a sailing vessel and I propose to show by this witness that by the standards of the sea this vessel had all the bulkheads that it required under the law, and under the regulations of the supervising inspectors and by the rules of

(Testimony of Albert C. Wilver.)

the classifications of the classification societies, and that she complied with all the standards of [1089] the time, not only when she was built, but now. The court will remember that in the case cited in the brief, that was the test used to determine whether a vessel was seaworthy, with or without bulkheads.

Mr. Adams: The bulkhead standards in the old days are not standard today, nor have they been accepted by the Bureau of Marine Navigation.

The Court: The court is in this predicament: It has not yet determined whether or not the regulations of the Department of Commerce are obligatory. The court is assuming, in approaching the subject, that there were proper regulations of the Department of Commerce, and it was the duty of this barge to comply with them. On the other hand, there is a test case pending, and if it should be determined that that was beyond the scope of the statute under which the Department of Commerce was working, then the seaworthiness of this boat might be in issue. In other words, your expert has testified as to the buoyancy of this boat—

Mr. Adams: I did not make myself clear apparently. I concede that it is an issue, irrespective of what the Bureau's requirements were. In other words, we have pleaded that the barge was unseaworthy, irrespective of those requirements, and I consider it in issue. The point that I raise here is that what was necessary with respect to a sailing ship engaged in the trade in which sailing ships

(Testimony of Albert C. Wilver.)

were engaged is no criterion of what is necessary for a barge anchored in the position in which this barge was anchored [1090] and used as a place where numerous people were gathered and fished.

The Court: The objection will be overruled.

Mr. Cluff: Will you read the question, Mr. Dewing, before you leave?

(Question read by the reporter.)

A. They have a collision bulkhead.

Q. And where is that bulkhead located?

A. It is located right in the bows.

Q. That is, within 20 feet of the bow?

A. Yes, sir; and also used for storing general stores, ship's stores, and chain locker and so forth.

Q. Do you recall any vessels in your line of experience that has any bulkheads after that collision bulkhead in the bow? A. No, sir.

Mr. Adams: May it be considered that my objection goes to this entire line of inquiry?

The Court: Yes.

Q. By Mr. Cluff: Do you know any rule of the supervising inspectors or——

The Court: They are the best evidence.

Mr. Cluff: Possibly so.

The Court: The rules of the supervising inspectors speak for themselves.

Q. Mr. Cluff: Yes. Do you know of any rule of any of the [1091] classification societies, Lloyd's, American Bureau, Bureau of Veritas, Norwegian Veritas, Danish Lloyd's, or any other classification

(Testimony of Albert C. Wilver.)

societies that require more than one bulkhead forward? A. No, sir.

Q. On a sailing vessel? A. No, sir.

Mr. Adams: Objected to. Just a minute, please. I move that the answer be stricken, if the court please, for the purpose of interposing an objection.

The Court: Motion granted.

Mr. Adams: I object to it upon the grounds it is incompetent, irrelevant and immaterial what those standards might have required as not material in this case, if the court please.

The Court: Well, they may or may not be material, Mr. Adams.

Mr. Adams: This ship certainly was not within one of those classification societies. They can't show that she met the requirements of any of those classification requirements and he has not attempted to show them.

Mr. Cluff: I am sure we can as far as bulkheads are concerned.

The Court: Objection overruled.

Mr. Cluff: Your answer, Captain?

(Answer read.)

A. No, sir. [1092]

Q. Captain, assume that—oh, by the way, you are personally familiar with the "Olympic", are you not? A. Yes, sir.

Q. Will you tell the court under what circumstances you became familiar with her?

A. You mean as a sailing vessel?

(Testimony of Albert C. Wilver.)

Q. No; as she was as a barge.

A. Oh, as she is now. Why, the owner of the vessel, Captain Anderson, I have known him a good many years and he sometimes comes to me for a little guidance, sometimes a little financial assistance, or something like that, wants me to give him a little reference, and so forth. And I had on two occasions sold him two vessels. I sold him a vessel called the "Kohala" and I sold the one called the "Olympic I", which was the original; and when he asked me, prior to buying the "Star of France", whether I thought it would be a good idea, I said absolutely, she was a fine ship and was very well suited for that particular trade that he intended to put it in.

Mr. Adams: May the answer be stricken upon the grounds it is non-responsive, it is a conclusion of the witness, no proper foundation laid, incompetent, irrelevant and immaterial?

The Court: It has not been taken as evidence as to the condition of the vessel. It is simply to show his familiarity with the vessel, explanatory of probably some questions [1093] yet to follow.

Q. By Mr. Cluff: After Captain Anderson brought the ship down here you inspected the vessel?

A. Yes, sir. He called me down——

The Court: Well, you inspected it.

A. ——to the Los Angeles ship yard in my capacity as a marine surveyor and I went into her from keel—well, from stem to gudgeon, from one end to the other.

(Testimony of Albert C. Wilver.)

Q. By Mr. Cluff: So you are familiar with her structure?

A. I am familiar with it.

Q. So far as the hull was concerned, the hull was tight, staunch and strong at every time you saw it, wasn't it? A. Yes.

Mr. Adams: Objected to as leading and suggestive.

A. I issued a certificate and stating that she was, in my opinion, in every respect seaworthy.

The Court: Just a moment. The question was leading and suggestive.

Mr. Cluff: Oh, it was. I grant that. I thought it was a matter that was not seriously in issue.

Mr. Adams: Mr. Cluff, I don't want to mislead you. I consider it an issue in this case.

Mr. Cluff: All right.

Q. Do you know how thick the plates were, Captain, the shell plating? [1094]

A. I know they were built of iron, and offhand, I would say it was about seven-eighths or an inch. I guess she has wasted some, you know, on account of her age.

The Court: What was that? I didn't understand the question.

Mr. Cluff: He said about seven-eighths of an inch. A. Seven-eighths to an inch.

Mr. Cluff: Seven-eighths to an inch.

The Court: That is the plating?

Mr. Cluff: The plating, the shell plating on the outside. That would be the sides of the ship.

(Testimony of Albert C. Wilver.)

A. The lower line would be a little less, probably an eighth inch less or a quarter.

Q. At the time you examined her was there any evidence of leaking or any weakness, soft plates?

A. No, sir.

Q. Captain, assuming that that vessel had had one or more amidship bulkheads, that is, athwartships bulkheads, either forward or amidships, and one aft of amidships, let us say; now assume that she was struck by the "Sakito Maru", a Japanese full-powered twin screw steamer so that she was penetrated just about amidships a distance, as will be demonstrated by drawings made by an architect or by a surveyor at the time, of from 23 feet on the starboard side of the "Sakito's" bow and 20 feet on the port side, running from the deck, from above the main deck in as far as those [1095] marks would indicate; assume also at the time of impact the "Sakito Maru" was some 500 feet long, had been swinging her stern to port in a starboard turn under full starboard wheel; assume that as soon as the impact happened that starboard swing stopped and the "Sakito Maru" swung about 30 degrees, the stern of the "Sakito Maru" swung starboard about 30 degrees, the "Olympic" surging broadside under the impact and swinging at her bow anchors which evidently held; in that experience do you think it is possible that any bulkhead structure forward and aft of that point of impact, assume there had been such, would have survived the impact?

(Testimony of Albert C. Wilver.)

Mr. Adams: Just a minute, please. Objected to upon the grounds no proper foundation is laid, it calls for a conclusion of the witness, incompetent, irrelevant and immaterial.

The Court: Well, I am assuming yet that counsel is getting his cart before the horse is the reason that he has not produced his evidence here yet that the assumption is based upon. If counsel insists upon that he will have to bring this witness back tomorrow.

Mr. Adams: I don't think, if the court please, even if that evidence is tied in and proven tomorrow that there is sufficient foundation laid for this witness to answer the question which Mr. Cluff has put to him.

The Court: Objection overruled. [1096]

Mr. Cluff: Will you read it again? Do you understand the question, Captain?

A. I understand the question, Mr. Cluff.

Q. Yes.

A. I think you asked me whether a vessel who receives—is hit with a terrific impact so as to cut into her 23 feet, and with a swinging vessel, whether or not the bulkheads would hold.

Q. Yes; assuming fore and aft bulkheads.

A. You mean athwartship bulkheads?

Q. Athwartship bulkheads.

Mr. Adams: Just a minute, if the court please. In view of what the witness thinks his understanding of the question is, I renew my objection.

The Court: You mean in what respect?

(Testimony of Albert C. Wilver.)

Mr. Adams: The witness has said that the vessel was hit with a terrific impact.

The Court: He retracted that and said it was cut in 23 feet.

Mr. Adams: You mean if it was cut——

The Court: He did say “terrific” and, of course, there is no evidence here as to the character. I don’t know whether you can assume that it was a terrific blow or not. It was cut something like 23 feet, and whether it was a terrific blow or not, but anyhow, the fact that the cut was 23 feet is the material point. [1097]

Mr. Adams: Another fact, if the court please, that the question put to the witness by Mr. Cluff does not assume anything with reference to the nature of the construction of the bulkheads. There is no assumption of facts on that basis.

Mr. Cluff: I will add that to the question.

Q. Let us assume that they are standard water-tight bulkheads of plating a quarter of an inch thick or more.

Mr. Adams: No evidence what standard bulkheads are, if the court please.

The Court: Oh, gentlemen, now, if I had been half as technical with your expert as you are trying to be now, you would not have had one question in.

Mr. Adams: Well, I didn’t ask him——

The Court: Just a moment, now. I am going to overrule the objection.

Mr. Cluff: All right. Now do you have the question, Captain, or would you like it read to you?

(Testimony of Albert C. Wilver.)

A. You had better read it. I might say something.

(Question read by the reporter.)

A. No; I don't believe it would.

Q. Now, what would happen after an impact like that with respect to the deck beams and stringers and the strength members of the vessel?

Mr. Adams: The same objection.

A. Well, I think—— [1098]

The Court: Same ruling.

A. Pardon me, your Honor. I believe that, in the first place, if you strike a vessel that hard—I am still going to insist on hitting that is a hard blow, 23 feet—the decks would fall down. That would be the first thing would happen; and the whole structure of the vessel would collapse and render those bulkheads asunder. They would be torn from the ship's side, either in one place or another.

Q. By Mr. Cluff: And then with the inrushing of the water, what effect would the inrushing of the water into the compartment where the hole was have?

A. Undoubtedly, if they were not properly braced by cargo or strengthened in the event of a salvage case, well, they would just simply collapse with the pressure of the water in a vessel that is partly laden. She may stand off if she is light, but loaded, no.

Q. One other question, Captain: Assume the col-

(Testimony of Albert C. Wilver.)

lision with the impact that I have given you in the previous question; assume further that the steamer or that the motorship, the colliding ship, came to rest after moving from the point of impact and going broadside with the "Olympic" a distance of about 30 meters, and then with her screws going full astern came to rest and the engines were stopped, would there be any separation of the two vessels by drifting of momentum or anything, in your opinion?

A. I am afraid I quite didn't understand you, Mr. Cluff. [1099]

Q. Let us see if I can reframe the question. Assume the impact with the penetration to the extent that I have described here to you in the previous question, that is, 23 feet in, and the swing of the stern; assume that the effect of that impact was to drive the "Olympic" about 30 meters or more in the direction in which the "Sakito Maru" was proceeding; assume that the "Sakito Maru's" engines were stopped, being reversing and full astern at the time of collision, then just as she comes to rest they stop, do you think the vessels would have separated under those circumstances?

Mr. Adams: If the court please, I object to that upon the grounds it is speculative, no proper foundation laid, it calls for a conclusion of the witness, incompetent, irrelevant and immaterial.

Mr. Cluff: I am inclined to think, too, there are some more factors that ought to be put in there.

(Testimony of Albert C. Wilver.)

I think I will withdraw that. It is not of great importance, anyhow. All right, I have no further questions.

Cross-Examination

Q. By Mr. Adams: Captain Wilver, the deck of that barge would certainly be less apt to collapse in the manner in which you have described if there were collision bulkheads athwartships, would it not?

A. It might carry the bulkheads with them. It all [1100] depends on the proximity of the point of impact.

Q. To the bulkheads?

A. To the bulkheads; yes, sir.

Q. Would the opinion which you have expressed be changed if it were shown to you that even without such bulkheads the decks of the barge did not collapse?

A. Well, it would be hard for me to conceive that they would not collapse to some degree, Mr. Adams.

Q. Let us assume that they did not collapse, except right in the immediate vicinity of the impact.

A. We will assume that; yes.

Q. All right. Now, do you still believe that an impact just forward of her main mast would be of such a nature as to rip up the decks and destroy the bulkheads which might be, let us say, 30 feet away from the point of that impact?

(Testimony of Albert C. Wilver.)

A. It wouldn't rip up the decks, Mr. Adams, not speaking about ripping up decks.

Q. Would it cause them to collapse?

A. There is a great probability that the pressure of the water would collapse them; but the greatest danger is that when the vessel receives a wound like this that she immediately quivers all over, and then usually the bulkheads let go at the hull plating on the side.

Q. Is that true of all collision bulkheads and covering all vessels?

A. Well, I presume there might be some exceptions, [1101] and I think in a vessel with a great big open hole where there is nothing but an even distribution of the ballast throughout her, for practically her whole length, I think that condition would exist; yes.

Q. And that type of vessel that you just spoke of there is no buoyancy whatever, is there, after a hole is stove into her side below the water line?

A. That is right.

Q. No buoyancy whatsoever?

A. She fills up with water, she sinks just the same as any other ship.

Q. If there were some collision bulkheads, either aft or forward of the point of impact, those bulkheads would add to her buoyancy, would they not?

A. Yes; they would add to her buoyancy providing they were left intact and where they are of such a nature that they would be able to stand the pressure.

(Testimony of Albert C. Wilver.)

Q. All right. Now, where does the pressure come from that you speak of?

A. Where does the pressure come from?

Q. Yes; where is this pressure?

A. From the outside pressure.

Q. The outside pressure?

A. The water rushing in there.

Q. Rushing into the compartment that is flooded? [1102]

A. Yes; and also the pressure against the ship on the bottom.

Q. Well, there is always that pressure against the ship on the bottom, isn't there?

A. Yes; but the hull is stronger, and a whole lot heavier than the bulkheads. A ship like that, her bulkheads, I think, according to the classification society, only needs to be a quarter of an inch.

Q. I am not sure that I understand what you mean by the pressure on the bottom. I can understand what you mean——

A. No; I mean on the hull as the vessel is immersed in the water, the pressure on the hull naturally is greater down below than it is at the edge of the water.

Q. Yes; I see what you mean.

A. That is a point I want to bring out. Mr. Adams.

Q. Such a collapse of the decks and a tearing away of the bulkhead from the sides of the hull would permit water to leak into the water-tight

(Testimony of Albert C. Wilver.)

hold, I suppose, to some extent; is that what you mean, that it would not thereafter be water-tight?

A. That is right.

Q. But it is true that, depending upon the size of those leaks, that water would not rush into those water-tight holds in the same manner that water would rush into the compartment which was flooded by the hole stove into that compartment, would it? [1103]

A. Well, that all depends on the nature and the size of the aperture of the hole.

Q. Water could gain access to those water-tight compartments much more slowly by virtue of those bulkheads, even though they have been pulled asunder to some extent, isn't that true?

A. Oh, yes; for a short period.

Q. For a short period.

A. Yes. Oh, yes; that is true.

Q. If nothing was done to pump out those compartments and to keep out that water which was seeping in, then I suppose that is your theory that the barge would ultimately sink; in other words, the buoyancy of the water-tight compartments would be destroyed by the water seeping in there and there being no efforts made, successful efforts, to keep air in the water-tight compartment to keep the water out, is that what you mean?

A. Well, that again depends on how large the hole is and how much pressure is on the outside, and whether or not that bulkhead has cargo back of it and it is reinforced, and so forth.

(Testimony of Albert C. Wilver.)

Q. Such a barge with such bulkheads, additional bulkheads, even though they were pulled apart in the manner in which you have indicated, would not sink as rapidly after having a hole stove in her side in the manner mentioned as she would without such bulkheads, isn't that a correct [1104] statement?

A. That is a correct statement; but, of course, that depends again on how large the aperture is, how far they tore away, and depend, too, on the strength of the collision.

Q. Now, taking into consideration this impact that you have taken into consideration in giving your answers——

A. Yes.

Q. ——and the effect of that impact upon those water-tight bulkheads that you speak of and the decks?

A. Yes.

Q. With such water-tight bulkheads, such a barge would remain afloat much longer than it would without them, isn't that correct?

A. That is right what I believe, Mr. Adams.

Q. How much longer do you think it would remain afloat?

A. Well, of course, that is theorizing to the extreme.

Q. Well, you have been theorizing all the way along, haven't you, Captain?

The Court: There is no occasion for argument, gentlemen.

A. But I am just simply unable to answer that

(Testimony of Albert C. Wilver.)

question, Mr. Adams, about how long, without knowing exactly what the amount of opening we have.

Q. Assume this, Captain Wilver, that without such bulkheads and with such a hole stove in her side, the "Olympic II" filled up and sank within a period of three [1105] and one-half minutes——

The Court: A minute and a half, isn't it?

Mr. Adams: Pardon me, no; from ten and one-half, if the court please, to 14.

The Court: Oh, yes.

Q. By Mr. Adams: In a period of three and one-half minutes?

A. Was that while the ship was in the position of impact?

Q. Part of the time, part of the time. If there were water-tight bulkheads, both fore and aft of the place that that hole was stove in, don't you think she would have remained afloat at least five minutes longer?

A. That all depends again. I think probably that if she had bulkheads and if the colliding steamer had remained in the hole and kept or helped to keep her afloat, I think she would have.

Q. Just disregard that, because that was not the case. The boats separated, so just disregard that.

A. Well, I still think it all depends on how far the bulkheads let go.

Q. How far do you think the bulkheads would let go?

A. I think they would let go practically all along the side.

(Testimony of Albert C. Wilver.)

Q. And what effect do you think that would have upon the continuity and length of the stability of the vessel [1106] before she sank?

A. I think that the intrushing water then would just collapse the bulkhead entirely and lay it flat.

Q. By the Court: Captain, you have heard here a description of the size of that hole in this vessel. Assume there would only be room in that vessel for how many bulkheads, at the most, standard bulkheads?

A. Standard bulkheads in that ship? It is not standard, your Honor, in that type of ship. We only have one bulkhead in there, and that is the collision bulkhead. That is the standard.

Q. What size is that bulkhead?

A. That bulkhead reached from the keel, or the keelson of the vessel up to the under part of the deck at a point about 20 feet abaft of the stem. That would be 20 feet in the forward end of the ship.

Q. About 20 feet?

A. Oh, yes; exactly.

Q. Supposing you wanted to put another bulkhead, or two, or three or four there, where would you put them?

A. It all depended, your Honor. We could put them anywheres you wanted to.

Q. You could fill it up with bulkheads?

A. Absolutely; put a hundred in there if we had to.

(Testimony of Albert C. Wilver.)

Mr. Adams: Is the court through?

The Court: Go ahead; that is all. [1107]

Q. By Mr. Adams: Captain Wilver, are you acquainted with the requirement of the Bureau of Marine Inspection and Navigation with respect to bulkheads for coastwise vessels, steam vessels?

A. Steam vessels?

Q. That is right.

A. No; I can't say that I am, Mr. Adams. I haven't much to do with steam vessels since I came ashore.

Q. Your experience since you came ashore with steam vessels has been very slight, is that correct?

A. Very slight, yes. I have been mostly acquainted with the fishing industry and harbor vessels.

Q. Now, assume, Captain Wilver, that on the "Olympic II" the bulkheads were put in the hold in that ship to meet the requirements, each bulkhead would be not less than 80 feet apart, one-fifth of her entire length apart, whichever is the lesser, and her entire length was 258 feet—

Mr. Cluff: Those are steamer standards you are reading.

Mr. Adams: I am reading the requirements that are for coastwise vessels which are steamers, which are referred to in the Bureau's specifications delivered to Captain Anderson.

Mr. Cluff: Just read him the sailing vessel standards.

(Testimony of Albert C. Wilver.)

Mr. Adams: I am reading the requirements in this mimeograph.

The Court: Gentlemen, just proceed. There is no objection. [1108]

Mr. Adams: Will you read the question?

(Question read by the reporter.)

Q. By Mr. Adams: Don't you think, Captain Wilvers, that bulkheads constructed in that manner aboard the "Olympic" would certainly have given her greater structural strength?

A. It would be pretty hard to improve on that structural strength on that vessel, Mr. Adams, because she was built under Lloyd's special supervision originally.

Q. In 1877?

A. Which were more stringent then than they are today. That is borne out by the fact of the weights of her plates.

Q. Do you think that those bulkheads would have increased her structural strength in any respect?

A. Well, to say "in any respect" would be—I say it would in some respects, yes; although that vessel was constructed originally to meet all the requirements, without any bulkheads.

Q. I am asking you now to consider that she is having bulkheads put in to meet these requirements.

A. Yes.

Q. If these bulkheads were put in to meet these

(Testimony of Albert C. Wilver.)

requirements and if the "Olympic" received the blow which has been mentioned here, the hole in her side, do you not think that her buoyancy would have been materially increased by such bulkheads? [1109]

A. It all depends on the manner under which these bulkheads would stand up under that terrific impact.

Q. It might have been increased; I mean the buoyancy might have been increased?

A. Oh, absolutely, there is that possibility.

Q. It is a strong possibility, isn't it?

A. No; I would say it was a very remote one.

Q. But there is a possibility; that is your testimony?

A. Well, there is a very remote one.

Q. By the Court: They have to be put in there for a purpose, don't they? They are put in there for the purpose of increasing the buoyancy?

A. They are put in there mainly, in most ships, your Honor, to separate the engine room from the cargo compartments.

The Court: I know, but the requirement on these boats to put in bulkheads is to increase the buoyancy of the vessel, is that not true?

A. I wouldn't say that is true altogether in most ships.

Q. Don't they put them in as a safety measure?

A. No, sir; not necessarily. They put them in to enable the vessels to carry bulk cargoes in bulk, like wheat, and they put athwartships bulkheads in there

(Testimony of Albert C. Wilver.)

and fore and aft bulkheads in there, but to say it is solely to prevent them from being run down and sunk, I wouldn't say that; no, sir. [1110]

Q. By Mr. Adams: Now, Captain, no one is insinuating that these bulkheads on these other ships that are carrying cargo are put in solely to prevent them from being run down.

A. No; I understand. I am just explaining.

Q. But they serve some purpose; they serve to divide a hold and they also provide a water-tight compartment; isn't that correct?

A. Well, it is correct in a certain degree, yes, Mr. Adams, it is.

Q. Isn't it a fact the "Olympic", constructed as she was on the day of the collision, with 1500 tons of ballast in her, if a hole was stove in her side below the water line she would go down like a plummet, wouldn't she?

A. Yes; she would if there wasn't some means taken there to prevent her from doing so.

Q. Have you ever made any study of the requirements of collision bulkheads on various types of vessels other than sailing vessels?

A. It all depends what you mean by studies, Mr. Adams.

Q. You are not a naval architect, are you, Captain?

A. No, sir.

Mr. Adams: Nothing further.

Mr. Cluff: No further questions.

The Court: That is all.

Mr. Cluff: Thank you, Captain Wilver. If the court please, I am out of witnesses. I did not anticipate that [1111] we would close quite this soon.

The Court: How long is it going to take to finish the case?

(Discussion as to probable length of case omitted from transcript.)

The Court: The court will take a recess until 10 o'clock tomorrow morning, and if these gentlemen can agree in the meantime, you will not have to bring your witness.

(An adjournment was taken until Wednesday, September 24, 1941, at 10 o'clock a. m.) [1112]

Los Angeles, California
Wednesday, September 24, 1941
10 a. m.

The Court: All right, gentlemen, proceed.

Mr. Cluff: If the court please, possibly at this time we have rather lost sight of the fact that there are other claimants here, and I think maybe the other claimants should be advised that if they have any evidence to bring forth——

The Court: I will do that when you have finished. They will be advised.

Mr. Cluff: I will call Mr. Reeder.

JOHN H. REEDER

called as a witness on behalf of Libelant in rebuttal, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. John H. Reeder.

The Clerk: Spell the last name, please.

A. R-e-e-d-e-r.

Direct Examination

Q. By Mr. Cluff: Mr. Reeder, you are a warrant officer in the Coast Guard?

A. That is true.

Q. What is your official rank?

A. Boatswain. [1113]

Q. Do you command a vessel? A. I do.

Q. And did in 1940?

A. At that time, no, not all that time; part of the time.

Q. Not all of 1940. What vessel is it that you commanded?

A. Coast Guard Cutter "Cahoone".

Q. Calhoun?

A. "Cahoone," C-a-h-o-o-n-e.

Q. In April and May, 1940, were you in command of that vessel? A. Part of the time.

Q. Did you in the course of your official duties on that vessel, in April and May of 1940, take certain bearings with respect to three fishing barges anchored on Horeshoe Kelp? A. I did.

(Testimony of John H. Reeder.)

Mr. Adams: Just a minute, please. If the court please, I object to the question in so far as it calls upon the witness to determine what his action was as an official duty, and as calling for a conclusion of the witness.

The Court: Isn't the material part he took the bearings?

Mr. Cluff: Oh, yes; I think the material thing is whether he took the bearings. [1114]

The Court: And as far as they were official, of course, that is a matter of opinion.

Q. By Mr. Cluff: By the way, Mr. Reeder, you have a chief mate's license from the inspectors of hulls and boilers, in addition to your navy warrant?

A. Chief mate, unlimited license, any ocean, any tonnage.

Q. Can you tell us when you took these bearings?

A. When?

Q. Yes; when, please.

A. Well, the date is indicated. April the 21st, 1940, and May the 17th, 1940.

Q. Have you laid the bearings down on this chart from your records? A. I have.

Q. What sort of bearings were those?

A. Compass bearings.

Q. Compass bearings taken from the "Cahoone"?

A. They were technically called compass cross-bearings from the "Cahoone" instruments.

Q. I wonder if you would state to the court just where you stationed the "Cahoone" and how the bearings were taken.

(Testimony of John H. Reeder.)

A. Close alongside of each vessel, and then we took bearings on the pelorus of prominent objects, and the nearest prominent objects, and then figured the distances between the "Cahoone" and the ship we were planning on finding the bearings of, which would be maybe 50 yards close [1115] aboard of each vessel. Instead of going on board the vessel to take the bearings we took them right off the "Cahoone", or I did, and then I would judge it would be about 50 yards of it or 60 I allowed for that in plotting the position.

Q. I wonder if you will state what the bearings were, first, with respect—let's see; it was the "Point Loma" and the "Samar" that you took first?

A. The "Samar" and then the "Point Loma" in order.

Q. All right. Will you state the bearings and distances as you obtained them that day?

A. The "Samar" bore—cross-bearings indicated that the position of the "Samar" was 144 degrees true, three miles from Los Angeles lighthouse. [1116]

Q. By Mr. Cluff: Three miles? That is marked on this chart, I think "Rainbow"?

A. "Samar".

Q. And the position noted for the "Point Loma" bore how?

A. 159 degrees true, 3 miles from Los Angeles lighthouse.

Q. And the "Olympic"?

A. 160 degrees true 3.2 miles; a little bit further out.

(Testimony of John H. Reeder.)

Q. You have checked this chart from your records made at the time? A. Yes.

The Court: Are those miles——

A. Nautical miles, your Honor.

Mr. Cluff: I wonder if you would take the dividers and compute for the record, by measurement on the chart the distance between the respective vessels; let us say first between the “Olympic” and the “Point Loma”. A. 400 yards.

Mr. Adams: What does that represent, Mr. Cluff?

Mr. Cluff: The distance between the position checked for the “Olympic” and the “Point Loma”. And between the “Point Loma” and the “Samar”?

A. 1600 yards.

Q. Between the “Olympic” and the “Samar”?

A. 1800 yards. [1117]

Q. 1800 yards? A. Yes.

Mr. Cluff: I offer the chart in evidence.

The Court: That will be admitted.

The Clerk: “Olympic’s” Exhibit No. 16.

T
138-D-21
16
BOR
Filed SEP 24 1942
C. H. Z. M. C. Chas.

16100
THE UNITED STATES DEPARTMENT OF THE NAVY
FILED
JUL 13 1942
PAUL P. O'BRIEN

The controlling depth through the channel, or in a separate route, or in a depth greater than the greater depth is given. Because of possible shoals, particularly at the edges, it must not be inferred that the depth shown extends throughout the entire width of the improvement on the date of the measurement unless so stated, or that it has not since decreased in places across the entire width.

0 Dequipped, to be reestablished.
T R B Temporarily replaced by a red buoy.
T B B Temporarily replaced by a black buoy.
T F B Temporarily replaced by a float white light buoy.
T F R B Temporarily replaced by a float red light buoy.
T F L B Temporarily replaced by a flashing white light buoy.
T F L R B Temporarily replaced by a flashing red light buoy.



1500 CHART 5147 TO BE OBSOLETE
Kusko & 159° 43' 30" miles 4/21/40
K. & L. & 160° 43' 30" miles 4/21/40
K. & L. & 160° 43' 30" miles 4/21/40
K. & L. & 160° 43' 30" miles 4/21/40

(Testimony of John H. Reeder.)

Mr. Adams: The only objection I have, if the court please, is to the materiality. The point I have in mind is that the positions taken might be so remote in time as not to indicate the position of the barges at the time of the collision. I will endeavor to demonstrate by cross-examination if any such condition existed.

Cross-Examination

Q. By Mr. Adams: Captain Reeder, after the date shown on that chart, did you take any bearings alongside of any of those barges? A. No.

Q. Do you know whether any of the barges shifted her position after you took the bearing for that barge? A. No, I do not.

Q. Do you consider, Mr. Reeder, that a sextant observation might be more accurate than the cross bearings that you took? A. They are.

Mr. Adams: No further questions. [1118]

Cross-Examination

Q. By Mr. Black: The distances that you gave, of 400 yards, 1600 yards and 1800 yards, I take it are estimated distances from the exact spot where the bearing was taken, and take no account of the length of the craft?

A. When I took the bearings, we were right close alongside of each vessel that we were plotting the position of, say, may be 25 or 50 yards, and that was taken care of in plotting the position.

Q. What I had in mind is this: Assuming that you were midships——

(Testimony of John H. Reeder.)

A. Assuming it was the center of each craft.

Q. The center of each craft, it takes no account of the length of the craft?

A. No, not at that distance. Our bearings are taken merely to find the craft, if we wanted to find them in foggy weather.

The Court: What is that answer?

A. Our position merely of plotting them on there, is in case we want to find the craft in foggy weather, or we had some reason why we wanted to go out there, or have some other vessel in the coast guard, or the fishing fleet know what the position of it would be. We make it a practice to take bearings of outlying objects offshore. [1119]

Redirect Examination

Q. By Mr. Cluff: Mr. Reeder, in your experience what would you say was the margin of error of bearings of that kind?

A. According to plane trigonometry the degree of error would make a mile difference in 60. At that particular distance, 3 miles off the breakwater, would be one-twentieth of a mile.

Q. So the margin of error would be only a few feet? A. One-twentieth of a mile.

Mr. Cluff: That is all. [1120]

WILLIAM JOHN ALDERSON

called as a witness on behalf of libelant in rebuttal,
being first duly sworn, testified as follows:

The Clerk: State your name.

A. William John Alderson.

Direct Examination

Q. By Mr. Cluff: Mr. Alderson, you are a marine surveyor by profession? A. Yes, sir.

Q. For many years here you have been engineer and structural surveyor for Lloyd's? A. Yes.

Q. Did you, at the request of Mr. Nix, attorney for the Hermosa Amusement Company, take the measurements of the bow of the "Sakito Maru" shortly after September 4, as she lay in the water at Bethlehem? A. I did.

Q. You made a report at the time?

A. Yes.

Q. A written report? A. Yes.

Q. Do you have a copy of that with you?

A. Yes.

Q. I will ask you if this instrument I am handing you is the original report. [1121]

Mr. Adams: I object, if the court please, as long as the witness is on the stand, to the introduction of any report.

Mr. Cluff: I am not going to offer the report.

Q. Are you able to testify, Mr. Alderson, as to the measurements that you took, from memory, without reference to your report?

A. It is a good time ago. I put them down on paper as I took them.

(Testimony of William John Alderson.)

Q. And that was embodied in the report?

Mr. Adams: There is no objection to his refreshing his memory from the report.

Q. By Mr. Cluff: Let me ask you this, Mr. Alderson——

Mr. Adams: I would like to see the document he is going to refresh his memory from.

Mr. Cluff: Yes. I showed it to you last night. Here is my copy. He has his own. You might have my copy, is you want to keep it in front of you.

Q. Mr. Alderson, I show you a picture, "Olympic's" Exhibit 6, and I will ask you if that appears to be a photograph of the starboard side of the "Sakito" about the time you took the measurements?

A. Yes, that is it; that is just about it.

Q. I show you another photograph, Yokota Exhibit No. 10, and ask if that is a photograph of the port side?

A. Yes. [1122]

Q. You have these photographs in your file, have you not?

A. I have copies.

Q. Will you point out to the court where you took your measurements? [1123]

A. There is a very distinct bulge in here. We finished at the double riveted angle. There is a line up there; that is a line for the forepeak bulkhead. There is a very distinct indent. We finished exactly at that angle. The angle itself was partly bent.

Mr. Adams: Will you, for the record, describe the point?

A. The double riveted angle——

(Testimony of William John Alderson.)

The Court: Just a minute.

Mr. Cluff: The witness indicated a point on Yokota Exhibit 10, being the port side, as the double line showing the forepeak bulkhead; the double line of rivets showing on the photograph just aft of the rope which is hanging down from the bulwark.

Mr. Adams: And the only row of double rivets forward of the Japanese flag symbol, and between that rope?

Mr. Cluff: Yes.

Q. Will you state now from where you took the measurements on the starboard side?

A. The starting point was the stem of the ship, next to the water, over here, to the end of the damage.

Q. Indicating on "Olympic" Exhibit No. 6 the after edge of the after hole, which shows in the photograph?

A. Right down to this end; right down to the edge of the hole.

Q. Mr. Alderson, refreshing your recollection from your report, will you tell the court the fore and aft [1124] distance of the indicated damage, according to those measurements? Tell us the port and starboard side roughly, and you may refer to your report.

A. I had them all noted. I don't depend on memory for things like that. On the port side of the stem, under the bulkhead, 20 feet 3 inches on the line of the damage.

Q. You say this is on the port side, 20 feet 3 inches?

(Testimony of William John Alderson.)

A. Yes. That is on the line of the damage. That ship is narrowing all the way down. That represents the line of the damage where we took these measurements, 20 feet 3 inches on the port side, and 23 feet on the starboard side.

Q. Those are exact measurements taken with a tapeline?

A. I took those measurements with it myself because I went there to take them.

Q. You caused to be made—oh, one other question. Yes. You caused to be made a sketch which I will now show you, and I will ask you if that sketch indicates the distances of penetration, or the distances to which you have just testified.

A. Yes; in my opinion, it does.

Q. I note on the sketch here a cross-ship's line, athwartship's line marked "12 feet".

A. Yes.

Q. Will you tell us what that line is?

A. That really represents the position of the forepeak bulkhead. [1125]

Q. The forepeak bulkhead?

A. At that particular point.

Q. And did you actually measure that bulkhead?

A. What?

Q. Did you actually measure that bulkhead?

A. Actually measured it. I had one end of the tapeline.

Q. Where did you take that measurement?

A. From the inside.

Q. That is, from the inside of the forepeak or the inside of the after hold?

(Testimony of William John Alderson.)

A. When I measured that it was the following day, you know, and the stagings were all up and this hole had been cut away, all those damaged platings had been cut away and we were able to go in through that.

Q. Went right in through the hole?

A. Yes.

Q. So you took the measurement, the interior measurement of the bulkhead from the inside?

A. One man had one side and I had the other end of the tape.

Q. Were those measurements taken to clear inside of the shell plating? A. What?

Q. Were those measurements taken to clear inside of the shell plating or to the inside of the frames?

A. Clear inside on each side. [1126]

Q. And that distance you found to be 12 feet?

A. Which?

Q. 12 feet? A. 12 feet, 12 feet across there.

Q. Mr. Alderson, in your opinion, does the drawings—that is, in your opinion from the physical evidence you found on the ship and the measurements you have taken, does the drawing which you made and the dimensions indicated thereon indicate the minimum penetration of the bow on the “Sakito Maru” into the ship that she struck?

Mr. Adams: Mr. Cluff, I object to the question because I think that is too hypothetical for this present witness to answer, inasmuch as he has not been informed about the angles of approach of the “Sak-

(Testimony of William John Alderson.)

ito". I have no objection to the diagram going in for what it is worth, but I do think that this question just put to the witness is not a fair one in view of this——

The Court: May I ask, gentlemen, isn't it apparent that those holes and markings were caused by a penetration and it would be self-evident that that was the extent of the penetration?

Mr. Adams: Subject to the explanation given by Captain Sato as to how damage on the starboard side might have been caused further aft than on the port side.

The Court: I know, but the Captain has testified as to those distances. [1127]

Mr. Adams: Yes. But here is my point, if the Court please: This diagram shows that the "Sakito Maru" went into the "Olympic" at an angle like that (illustrating). Now, the witness has not been asked to assume any facts concerning the angle that the "Sakito" penetrated the "Olympic".

The Court: The 3 feet difference on each side would indicate the fact that she penetrated at an angle?

Mr. Adams: No, if your Honor please.

Mr. Cluff: There is no question about that.

Mr. Adams: If the Court please, of course, that is one inference that can be drawn from it; but Captain Sato, if the Court will recall his testimony, testified that damage on the starboard side might have been caused further aft by virtue of the fact that

(Testimony of William John Alderson.)

the "Sakito's" stern swung to her right as the stern of the "Olympic" swung; and he thought that the damage might have been caused a little further aft on the starboard side by virtue of the motions of the ship at that time.

The Court: How are you going to get around this feature of it: It is your theory that the boats immediately separated of their own—you might say, the "Olympic" fell away by its own weight?

Mr. Adams: Yes; that is right, a momentum——

The Court: And if it fell away, that damage would not be done by still going in the hole? [1128]

Mr. Adams: Of course, the swinging might have taken place before the vessels did separate. Of course, the damage could not be done after the vessels separated.

The Court: No.

Mr. Cluff: It occurs to me, swing or no swing, the hole indicates that the bow was 23 feet into the structure, and I can't get away from it. I think the question is more or less obvious.

The Court: I was just wondering why you were asking it.

Mr. Cluff: Maybe I am being obvious.

The Court: I think it is a matter for you gentlemen to argue.

Mr. Adams: I think it is argument.

Mr. Cluff: Very well. I would like to offer into evidence the drawing from which Mr. Alderson has just testified.

(Testimony of William John Alderson.)

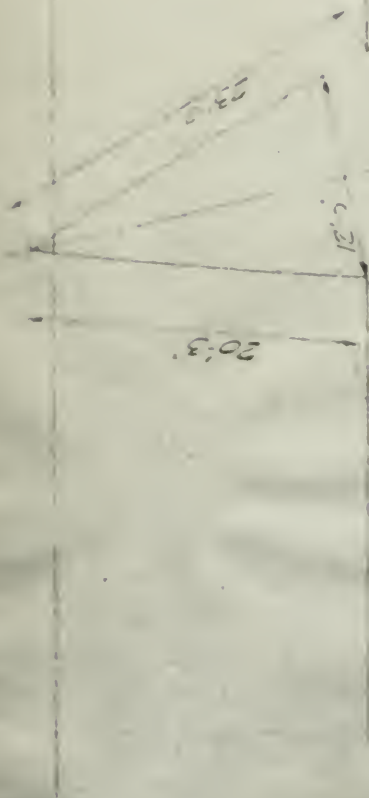
Mr. Adams: Subject to its materiality, for the reasons which I have indicated by my remarks to the Court, I have no objection, but I do object to its materiality for those reasons.

The Court: Well, we have nobody to take the measurements. Did you gentlemen get together on any measurements that were taken by the diver?

Mr. Adams: We haven't yet, no, if the Court please.

The Clerk: That will be Exhibit 17. [1129]

Olympic



20'3" - 12'0"

11111

PAUL P. GERMING
1911

PAUL P. GERMING
1911

500.00

1138.68

Olympic 17
SLP 11 1341
7/8/11

(Testimony of William John Alderson.)

Mr. Cluff: I don't think there is any claim the diver took any measurements.

Mr. Adams: I don't know. I don't think so, but I don't know.

Mr. Cluff: Mr. Alderson, let us get this separated from the ones that are in evidence. Those are yours, I think. All right; I have no further questions from Mr. Alderson.

The Court: I would like to ask a question.

Q. You say this hole was big enough for a man to crawl through?

A. Oh, yes; after it was cut away it was rather open then, because it was all jagged edges before. But after cutting away, they put plates on for temporary repair for the ship to go away, and in order to do that they cleared off all that damage and that was large enough to go through. Oh, yes, you could get through the hole.

Q. What was the thickness of the plates?

A. About half an inch.

Mr. Adams: If the court please, the witness testified he crawled through after the hole was cut out.

The Court: I understand that, but I had a misconception of the picture. It did not seem to me that the holes were that size.

Q. Were there any measurements of those holes before they were cut away? [1130]

A. I didn't have any.

Mr. Adams: None other than what the Captain has already testified to.

(Testimony of William John Alderson.)

Q. By Mr. Cluff: Could you see, Mr. Alderson, from the size of the plate—could you give the court any idea how big those holes are?

A. Those frames are about two foot apart, 24 inches, your spacing of those frames usually. I didn't measure them, but according to rules, a ship of that size, the frames in the fore-peak should be spaced 24 inches; so if you just take where those single lines come in, you see that would be 24 inches there, so that hole must have been 4 feet or 4 feet 6, I should say, from forward to aft.

Q. You determine where the frames come by the rivets, of course, the lines of rivets?

A. Yes; just judging by that, going by that. I didn't measure them.

Mr. Cluff: Thank you.

Cross-Examination

Q. By Mr. Adams: I show you a drawing made by one of the officers of the "Sakito Maru", which is "Sakito's" Exhibit No. L, which purports to show the damage done on the port side of the "Sakito". Will you examine that, please, Mr. Alderson?

A. Yes. [1131]

Q. Now, based upon your examination and survey of the "Sakito Maru", does that diagram show substantially the portion of the "Sakito's" bow on the port side that was damaged?

Mr. Cluff: Are you referring to above or below the water line?

A. I should say yes. There is an indent in the

(Testimony of William John Alderson.)

valve and then, of course, the scoring and the indents more or less right back here.

Q. By Mr. Adams: Did you count the frames?

A. I would just like to count those, if you don't mind.

Q. Yes. A. Yes; I guess that is right.

Q. Is that about right?

A. That is the tenth space. That will be the fore-peak bulkhead down there.

Q. When you took your measurement or distance that that damage extended aft from the stem did you have your tape at the stem on the level of the water line or on what level?

A. I had the tape right here.

Q. You are indicating the——

A. As far as I could remember, I had it right there, which was in the neighborhood of that indent.

Q. And that is the dent on the stem?

A. You see, the further edge of that indent back to here.

Mr. Adams: Let the record show the witness is indicating [1132] the dent in the stem.

Mr. Cluff: Yes; in the way of the top of the damage.

Q. By Mr. Adams: Mr. Alderson, I show you another diagram which was made by one of the officers of the ship, which purports to show the damage done to the starboard side. A. Yes.

Q. Will you examine that and then tell us whether that diagram substantially shows the damage to the

(Testimony of William John Alderson.)

starboard bow of the "Sakito"?

A. Yes; I should say it does. I should say it does.

Q. Wasn't there, Mr. Alderson, some indentation in the plate just aft of the hole on that starboard side, that is, the second hole from the stem?

A. There was a little, but not much. Of course, that hole is further aft from the one on the other side. That is the position from the bulkhead, because when you looked through the hole you could see the bulkhead that way, see the solid plate, looking that way. But that is just about the extent of the hole. These were all indented, they were all forced in. All the damage was forward, both on this hole and on this hole the damage was forward. The plates were forced in.

Q. I see. Your tape run from the stem only to the edge of the hole, or did it run as far aft as the hull showed any indentation or marking? Do you see what I mean? [1133]

A. Yes; I see what you mean. Just to the end of that hole. Of course, there was a round edge on it. It was not a sharp edge to the end damage I would say, to the end of where the plate was bent in.

Q. Isn't it true, based upon your experience, that the bent portion of the plate might extend a little further aft than where there was actually any object penetrating the hole, or penetrating the hull?

A. It might be just a matter of an inch or two.

Q. From this photograph here, "Sakito's" Exhibit No. 6, it would appear that the object which

(Testimony of William John Alderson.)

made that hole in the hull might be considerably forward than the after edge of the hole itself. I am wondering if you would agree with that possibility?

A. Not in that case I wouldn't, because the photograph shows pretty plainly. There is the area of damage. You can see where that had been all scored around there, which is just about in the line, you see, with the end of the damage. You would always allow a little bit for the rounding of the plate. If the plate is punched in it goes in beyond the hole, it will do that.

Q. That is what I mean.

A. But you can see right here that is where the plate had been heavily scored and rubbed——

Q. Yes.

A. Evidently from the collision, but that is all you [1134] could surmise, been rubbed and scored. It must have been from some heavy, hard object.

Q. Mr. Alderson, did you measure the distance above the water line that those holes extended?

A. No. It was all staging when I got there. There was all staging for the men to work on, you know, and I was on the staging when I measured those measurements.

Mr. Adams: That is all.

Mr. Cluff: There is a picture that is rather enlightening on that, Mr. Alderson.

Mr. Montgomery: I would like the record to show the number of the exhibit upon the sketches.

The Court: The record already shows the exhibit number, Mr. Montgomery.

(Testimony of William John Alderson.)

Mr. Black: May I ask Mr. Alderson a question, Judge?

Cross-Examination

Q. By Mr. Black: Mr. Alderson, are you familiar with the barge "Olympic II"?

A. No; I have seen her and that is all. I don't know anything about it. [1135]

Q. Are you able to express any opinion whether it would be possible for the "Sakito Maru" to have penetrated as deeply as your observation indicates, assuming that she had a draft of 24 feet forward and 27 feet aft, and assuming that she struck a barge with an iron hull, at anchor, which had plates three-quarters of an inch to an inch thick; I ask you whether you have any opinion whether it would be possible to penetrate that far at a speed of a knot or a knot and a half?

Mr. Adams: I object to it upon the grounds——

A. I think it is quite likely. The "Sakito Maru" was loaded very heavily.

Mr. Adams: I object to it upon the ground that there was no foundation laid to qualify the witness to answer such a question.

Mr. Black: Just a moment. The witness is going ahead with the answer.

Mr. Adams: I think my objection is in the record, isn't it, Mr. Reporter?

The Reporter: I think you had better repeat it, Mr. Adams.

The Court: I don't think there is anything here

(Testimony of William John Alderson.)

to show that he is qualified to express an opinion.

Mr. Adams: I stipulate the witness' qualifications as a marine surveyor.

The Court: I know, but I mean to be able to testify [1136] that the two objects coming together at a knot and a half would produce that result or would not.

Mr. Black: I will withdraw the question.

Mr. Cluff: That is all, Mr. Alderson, thank you.
Mr. Crank. [1137]

ROBERT H. CRANK,

called as a witness on behalf of Libelant in rebuttal, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. R. H. Crank.

Direct Examination

Q. By Mr. Cluff: Mr. Crank, what is your occupation?

A. I am the owner and operator of a sport fishing boat.

Q. How long have you been engaged in sport fishing? A. About five or six years now.

Q. And in what waters?

A. Oh, San Pedro locally, Catalina Island, Santa Barbara Island.

Q. When you say "San Pedro locally", does that

(Testimony of Robert H. Crank.)

include the area to the southeast of the breakwater in the neighborhood of what they call Horseshoe Kelp? A. Yes; that is right.

Q. About how often in the course of the last five years have you fished that water in your live bait boat?

A. Well, hundreds of times, I would say.

Q. Do you recall the location of three anchored barges out there in the year 1940, the "Olympic", the "Samar", the "Rainbow", as we call it, and the "Point Loma"? A. I do. [1138]

Q. Do you know how long barges have been in the habit of anchoring in that area?

The Court: Oh, I think that has been asked and answered enough.

Mr. Cluff: Then I won't go into that aspect of the case with him.

Q. You were good enough to make up for Mr. Bullard from your working charts, Captain, a transcript on chart No. 5101, a designation of some pencil marks here about southeast of the breakwater light. First, I call your attention to a sort of a circular mark right at the point that is now marked with the word "Wreck" and I will ask you what that is.

A. Well, that is the approximate position of Horseshoe Kelp.

Q. Just what is Horseshoe Kelp as a physical matter?

A. Well, it is rocky formation or bank that is covered by kelp, and when there is a condition of

(Testimony of Robert H. Crank.)

slack tide, no current, clear water, this kelp can be seen, and it is in the shape of a horseshoe. That is where it gets its name.

Q. I call your attention to this chart 5101, with the word "Wreck", which indicates the position where the "Olympic" sank, and the line you have drawn indicates the approximate boundaries of Horseshoe Kelp? A. Yes.

Q. I notice several crosses on the chart. What is [1139] the significance, if any, of those crosses?

A. They were the approximate positions of these barges, and also places where there is rock piled, where we could fish from.

Q. Those are your private marks, which indicate good fishing conditions? A. Yes.

Q. I notice an outline in pencil, rather in the shape of a boomerang, is about the only thing I can think of.

Mr. Adams: It looks like a foot.

Mr. Cluff: Yes, a foot ready to step on the easterly shore there. I will ask what that mark indicates.

A. This fishing ground there is quite a large bank, and there are certain places that might be good for halibut; that would be sandy bottom; and there are many other places, not shown in the chart, that are covered by rocky formations, probably some of them very small, and they are feeding ground for larger fish; and we fish from all these different places. Some of these are discovered, incidentally, by drift fishing, or something like that. We may catch a kelp bass;

(Testimony of Robert H. Crank.)

then we sound with grapple hooks, and so forth and so on, to determine the position of this bank, and when we get right on the bank, we take a pelorus and take bearings——

Q. I don't want too much detail.

Mr. Adams: I move that the testimony be stricken [1140] concerning the good fishing grounds in that particular area. While that might be a matter of some interest to those inclined to pursue the art of fishing, I don't think it is material to this case.

The Court: The court will take judicial knowledge of that fact. I can remember 20 years ago going out to Horseshoe Kelp and fishing from a barge.

Q. By Mr. Cluff: The foot-shaped area indicates the approximate limits, as you have charted them?

A. Yes, approximately. They may extend as far as Balboa or Newport entrance.

Mr. Adams: It indicates the limits of what, Mr. Cluff?

Mr. Cluff: As I said, the limits of the fishing ground, as they are laid down on your chart?

The Court: We are only interested in Horseshoe Kelp, gentlemen.

Mr. Cluff: I have no further questions of the witness. I would like to put the chart in evidence as "Olympic's" next exhibit.

Mr. Adams: I object to a portion of that chart.

The Court: It will be admitted in so far as it describes Horseshoe Kelp.

The Clerk: "Olympic's" Exhibit No. 18.





(Testimony of Robert H. Crank.)

Cross-Examination

Q. By Mr. Adams: Mr. Crank, you haven't examined below the surface of the water any portion of Horseshoe Kelp, have you? [1141]

A. Yes; by soundings.

Q. I meant, by going below in a diver's suit?

A. No; I had no occasion to.

Q. Your description of the shape of that kelp is based upon your observations from aboard boats in the vicinity? A. Yes.

Q. And from having been able to see kelp from that boat? A. Yes.

Q. Did you take any measurements, from one end of the horseshoe to the other, in order to indicate the extent of the kelp bed there, or is that just approximate?

A. That's approximate.

Q. It is just an estimate?

A. Just approximate.

Mr. Cluff: No further questions. The Hermosa Amusement Company and Captain Anderson will rest.

The Court: Do any of the other libelants have any evidence they wish to introduce?

(No response.)

The Court: Have you any further evidence?

Mr. Adams: I would like to call Captain Anderson for one or two questions, and I would like to call Captain Sato for one or two questions. [1142]

JOAKIM M. ANDERSON

recalled as a witness in surrebuttal, testified further as follows:

Direct Examination

Q. By Mr. Adams: Captain Anderson, after you received from the Bureau of Marine Inspection and Navigation the mimeographed copy of specifications, which have been introduced in evidence, you had a discussion, did you not, with Captain Fisher concerning the requirements that the *Hermosa* had to meet in order to comply with those specifications, is that correct?

A. Yes, sir.

Q. And you were told, were you not, that, among other things, you were required to put in six bulkheads? A. No, sir.

Q. You stated that to make the changes that were necessary it would cost \$50,000, isn't that correct?

A. About that, two bulkheads.

Q. With two bulkheads? A. Yes.

Q. Where were those two bulkheads to be placed?

A. It was never mentioned.

Mr. Adams: No further questions.

Mr. Cluff: No further questions. [1143]

SYUNZI SATO,

recalled as a witness in surrebuttal, having been previously duly sworn, testified as follows:

Direct Examination

Q. By Mr. Adams: Captain Sato, you have seen a photostatic copy of this blueprint which I put before you, and which is "Olympic's" Exhibit No. 3, have you not? A. Yes, I have.

Q. In answering the questions that I am going to put to you, Captain, assume that the hull of the "Olympic" barge was about $\frac{7}{8}$ of an inch thick, and that the hull was made of iron, and that the "Olympic" was constructed in 1877, and that her length and beam were as shown on "Olympic's" Exhibit No. 3; and assume that the "Olympic" was constructed substantially as shown on "Olympic's" Exhibit No. 3. [1144] Now, Captain, based upon your experience, and what actually happened at the time of the collision, as you observed, and as you have testified to, have you an opinion as to whether the barge would have sunk at the time, and in the manner in which she did, after the collision, had the barge had additional water-tight bulkheads forward and aft of the hole stove in her port side?

Mr. Cluff: To which we object upon the ground that it is incompetent, irrelevant and immaterial: no foundation laid. The witness could see the events of the collision from his bridge. Obscured by the "Sakito's" bow, I don't see how he can testify as to the size of the hole, or anything else.

(Testimony of Syunzi Sato.)

The Court: I will admit it for what it is worth.

A. No, I think if it had the additional water-tight bulkheads it would have kept afloat a little longer.

Q. By Mr. Adams: In your opinion might the barge have kept afloat five minutes longer?

A. It would depend on the number of additional bulkheads, and also as to the strength of the bulkheads.

Q. Supposing that there were two additional bulkheads on the forward and on the aft of the hole stove in her side.

Mr. Cluff: That is objected to as calling for the opinion of the witness, and the speculation of the witness.

The Court: Gentlemen, I could not help but think, and I have been thinking as you have been going along talking [1145] about these bulkheads, that both sides have offered the type of evidence relative to these bulkheads which was not satisfactory to the court. It seems to me that with your engineers and architects, and with the drawings of this vessel, that you could have testimony from somebody that actually knows what those bulkheads would do, if they were in place. This Captain, with all his training, there is nothing to show here that he knows what additional bulkheads would do, any more than you do or I do, and he is attempting to answer something which the evidence does not show, from his experience, and he is not in a posi-

(Testimony of Syunzi Sato.)

tion to give the court the kind of evidence that bears weight; and that is true with the other witnesses—all of the witnesses who have testified as to what would have happened if certain conditions were there. It seems to me that your naval architects could tell us absolutely, knowing the size of this hole, what bulkheads would have been required to have kept that boat afloat; and as far as this court is concerned the opinions given by witnesses on both sides are purely speculative; none of them are based upon training and engineering ability that furnishes the aid that the court should have.

Mr. Adams: I would like to make this statement: We have submitted this problem some time ago to a naval architect, and he could not, from the standpoint of a naval architect, locate the exact position of the bulkheads that [1146] he would put into the barge, without knowing the framework construction inside the hull of the "Olympic", and we were never in a position to obtain such information. That information was always in the possession of the libelant, and was never brought out.

The Court: You have your opportunity of obtaining it.

Mr. Adams: I don't know how, if the court please. Let me ask you, Mr. Cluff, have you got any other plans of the "Olympic", other than this blueprint?

Mr. Cluff: Not that I know of.

Mr. Adams: We submitted this blueprint to a

(Testimony of Syunzi Sato.)

naval architect. Have you any information of the inner framework of the "Olympic"?

Mr. Cluff: I don't know of any.

Mr. Adams: If there is such information I would be delighted to have you submit it.

The Court: The witness who was on the stand yesterday stated that he owned a companion ship.

Mr. Cluff: I don't think he owned it, your Honor. He was mate of the "Star of Italy".

Mr. Adams: What is needed is a description or drawing of her lines. If that could be furnished, we would be glad to submit that material to a naval architect, and have him testify. As I say, we have been working on that already. I would like to state to the court that this witness does have certain qualifications in this respect. [1147]

The Court: I have read his testimony as to his training and educational qualifications.

Mr. Adams: I perhaps should illustrate, by his testimony, that at the Tokyo Nautical School, where he studied for 5 years before he went to sea, he did take up, in the course of those studies, the construction of ships.

The Court: You may proceed. I have made my comments.

Q. By Mr. Adams: Captain, Sato, before you answer the question put to you——

The Court: Let him answer the question; then you can go into the question of qualification afterwards, so you won't have to repeat that long question again.

(Testimony of Syunzi Sato.)

Mr. Adams: Will the reporter read the question?

(Record read by the reporter.)

The Court: Of course, these regulations they sent out were general requirements, which were mimeographed.

Mr. Adams: General minimum requirements.

The Court: But there is nothing in there to indicate the number, size, or type, of bulkheads that should be placed. It is evidently a matter of discretion with the inspecting officer. It tells about sufficient lateral bulkheads, if I remember correctly, but that is general. Now you are talking about bulkheads that would be sufficient to have maintained the buoyancy of this boat for even a few minutes longer. We don't know, if it met the requirements, what bulkheads would have been necessary to have been put in [1148] there, so how can the witness answer the question without knowing the type of bulkheads that should have been in there to meet the requirements?

Mr. Adams: Of course, there is one thing I would like to make clear, in discussing this particular problem, and in eliciting testimony on this problem I would like to make it clear that it is our position that this order, having been given to the Hermosa Amusement Corporation by the Bureau of Marine Inspection and Navigation, and their admittedly failing to comply with it, is a violation of a statutory obligation; that the burden is upon the Hermosa Amusement Corporation to prove that not only such failure to comply with that regulation did not contribute to the collision, and any loss resulting

(Testimony of Syunzi Sato.)

from the collision, but it could not have contributed to such collision or loss.

The Court: It seems to me that the court is faced with several problems there, and I am speaking frankly: In the first place, if the story of the Captain is accepted, that they did not see the barge until they were within 200 meters of it, that would create a different situation than if the story of the others, that the visibility was some 2,000 feet or 1800 feet, was accepted. Now, if the visibility was 1800 feet, even if they were out there on an egg-shell it was the duty of the "Sakito Maru" to avoid hitting them. In other words, it is the same proposition—I may be drunk out in the center of the street, and if a [1149] man sees me and deliberately runs over me, I have violated every rule of the road, yet, at the same time, as we call it in civil practice, the last clear chance exists, and while our decisions usually do not recognize the phrase "last clear chance", in a very recent opinion by Judge Hand he comes out very definitely, and uses that very expression. I am trying to get the different pictures, because I don't know yet what my conclusions are going to be.

Mr. Adams: Without endeavoring to launch into an argument, may I just briefly state our position regarding that particular point: We will elaborate upon it with such opportunity as the court gives us. There were various estimates of visibility by witnesses produced by the libelant. I think if the court will study the testimony of those witnesses, and review the transcript where necessary, he will

(Testimony of Syunzi Sato.)

find that those estimates were given by witnesses who, at the time that they saw the "Sakito" approaching, were near the surface of the water. If the court will recall the testimony of each of these witnesses, the first thing they saw was a black object that was the black hull of the "Sakito"; as the "Sakito" came closer, then her superstructure could be seen, and eventually her masts. The court also will recall the testimony of Lieutenant Hewins and Lieutenant Bartlett that the fog lay in a strata, and Lieutenant Bartlett testified that when he was on the deck [1150] of the coast guard cutter, going out there, the visibility was much greater than it was on the bridge.

The Court: I am not going to attempt to analyze that testimony, but it seems to me that the findings of the court as to the visibility that existed at that time are going to depend a whole lot on the importance of this question of bulkheads.

Mr. Adams: The visibility varied with the location of the person. The "Sakito's" lookout on the bow was at least 35 feet above the surface of the water; those on the bridge over 50, and their visibility was different than those who were lower to the surface of the water, and we will, I think, show to the court's satisfaction, when we have a chance to demonstrate the testimony on that point, that that is correct, and that is the reason for the difference in the estimates on visibility.

Q. I would like to ask the Captain one further question, not on the question of bulkheads so much,

(Testimony of Syunzi Sato.)

but this is an answer to some of the skepticism that the court expressed yesterday: Captain, considering the facts which I have asked you to assume regarding the construction of the "Olympic", and considering the construction of the "Sakito" which you have testified to, in your opinion could the "Sakito Maru" have made a hole in the port side of the "Olympic" which penetrated, let us say, to the center or keel line of the "Olympic", if the "Sakito" at the time of [1151] the impact was only going one knot or one and a half knots per hour?

Mr. Cluff: Same objection heretofore noted.

The Court: Overruled.

(Question read by the reporter.)

A. It could. Do you want me to explain it?

Mr. Adams: Yes, will you explain it, please?

A. The displacement of the "Sakito" was over 10,000 tons at that time, and with the force of it going at the rate of a knot and a half at that time, it would have a very great momentum; and the "Olympic" being a craft over 60 years old, in my opinion I think the plates of the "Olympic", comparing with the new plates,—I don't think that the strength of the plates of the "Olympic" would have more than about a quarter, or possibly less, in strength; and in my opinion a craft that is over 60 years old, in many plates it would not have a strength of over 10 per cent, and the rest of it will be all put down to rust, and that, furthermore, the inside of the "Olympic" was practically empty—open.

(Testimony of Syunzi Sato.)

Q. Do you mean by that that there were no frameworks?

A. No, I don't mean that. It had a frame. It was rather empty—it was empty; and then, in order to tear the plates, and make a hole in the plates, you would not have to have very much force to do that; and then, once the plates are cut, it is a very easy matter for them to [1152] tear further.

Q. In other words, once the hull is penetrated of the "Olympic"—

A. Yes, that is what I mean, it would make it easier to tear the rest of it.

Q. Of what materials are the stem and the plates of the "Sakito" constructed? A. Steel.

Q. Captain Sato, do you think that the fact that the "Olympic" was anchored both by a bow and stern anchor, at the time of the impact, might have contributed to the penetration of the hull of the "Olympic" by the stem of the "Sakito"?

A. Surely, there would be more force attached to that than a boat which was floating around; that means, without anchors.

Q. In other words, the fact that the "Olympic" was anchored offered some resistance which would not be offered by a vessel which is simply floating, without being anchored? A. Yes.

The Court: When they are anchored they have a leeway, a certain distance that they float with those anchors, don't they?

Mr. Adams: Yes, until that distance is reached by being pushed through the water.

(Testimony of Syunzi Sato.)

The Court: That is, the limit reached by the anchors? [1153]

Mr. Adams: Yes, then you have a resisting force.

A. Yes.

Cross-Examination

Q. By Mr. Cluff: Captain Sato, you told us the other day, when you were on the witness stand, that after the impact the "Sakito" moved forward, after she came to a stop, 30 meters?

A. About 20 or 30 meters, I did.

Q. About 20 or 30 meters?

A. That is not definite.

Q. And it did that between 7:10-1/2, when the impact occurred, and 7:11, when you stopped the engines?

A. By that I meant between 15 and 20 seconds it did that.

Q. Between 15 and 20 seconds?

A. That is about.

Q. It went 20 or 30 meters between 15 and 20 seconds?

A. I can only give an estimate.

Q. How many meters is that in a minute, Captain?

The Court: Figure it out for yourself.

Mr. Cluff: Very well. That is all. No further questions.

Mr. Adams: That is all. We rest, if the court please.

Mr. Cluff: We rest.

The Court: Does everybody rest? Mr. Adams, heretofore [1154] you asked for a continuance, and

the court denied it because of the fact that there were written statements of the parties present, as to their testimony. Do you now feel that you have been at any disadvantage by reason of not having those parties present?

Mr. Adams: In answering that question I wish to answer it in a manner which I think is fair to the court, fair to counsel on the other side, and fair to my client. There is, of course, a conflict in the testimony as to the estimates of visibility and distance. Certain witnesses which we either produced here at the trial, or whose testimony we would obtain in a more elaborate and detailed form by the way of depositions, than is contained in their statements, would testify as to such matters. It is true that the testimony would be cumulative, but what the effect of cumulative testimony is upon the mind of a court, where the testimony is in conflict as to certain points, I don't know. So it is impossible for me to determine whether the cumulative effect of that testimony, even though it be cumulative, would have a material effect upon the court's mind in having the court resolve in favor of the contentions of the "Sakito Maru" any such conflicts or disputes in the testimony. I don't know whether I make myself clear.

The Court: It is clear, but the position of the court is that the court does not want to deprive the respondent here of an opportunity to present his case in the most [1155] favorable light. The Captain of the "Sakito" has given extensive oral testimony, and I may say that he is a very intelligent,

straightforward witness, a witness that the court feels that, if his findings do not altogether agree with the Captain's testimony, it is not going to be because I think that the Captain deliberately misstated it, but because of natural errors that come up from different viewpoints, of the collision. In other words, I feel that the Captain has, to the best of his ability, told the truth; that is the way the Captain has impressed the court; that he is a high type, a high class witness; and I felt that under those circumstances, it is difficult for the court to see where the rights of the "Sakito Maru" have been hurt by failure to bring those witnesses here. At the same time, I want everyone to feel that whatever the ultimate outcome of this case is, that they have had their day in court—each side.

Mr. Adams: I might make this statement; subject to not knowing what the cumulative effect of that testimony will be upon the court's mind—by that, I mean if there is only one witness who has testified one way, and there are ten others who have testified the other way, that if you have six more witnesses come in who may confirm the testimony of that one, that that person's testimony is, by virtue of the cumulative effect of the testimony on the point, corroborated, and perhaps accepted more readily by the one [1156] who is trying the facts. I have no way of telling.

The Court: These witnesses, in their statements, are almost cumulative to the second degree, because you have depositions here—some lengthy depositions—

Mr. Adams: Yes, that is correct.

The Court: And the very lengthy testimony of the Captain. In other words, Mr. Adams, I don't want anybody in the case to feel that they haven't had their day in court, and if there is any serious feeling that they have not had their day in court the court might be willing to give further consideration to it; but personally I don't think anything can be gained by it, but at the same time I don't want counsel to feel that the court has arbitrarily shut them off.

Mr. Adams: The court has reference to the witnesses who were not available because of being in Japan, and because of conditions?

The Court: The court has in mind the statements that were read into evidence yesterday. The court has in mind the fact that many months ago the court advised counsel that this case was going to proceed to trial as expeditiously as possible, and wanted you to get your depositions, and for reasons that appear by the affidavits, the depositions were not taken because they anticipated certain witnesses would be present in person.

Mr. Adams: Let me make this statement, so that our [1157] position will be clear: I personally think that the court has been fair in the court's action in respect to a continuance. When I say I personally think that, I don't mean that anyone else has expressed an opposite view from what I present; I am simply stating a personal opinion, and perhaps my principals coincide with that personal opinion. I think the court has been fair in that respect; I think if I were in the court's position I would have taken

like action. So, subject to what I have said before, that is about as much as I can say concerning our position on that point.

The Court: Now, gentlemen, I feel that the briefs should be filed as expeditiously as possible. It seems to me that this is a case where even the facts should be briefed, rather than orally argued, because I believe that each of you can present your case more logically in writing, when you take your transcript and analyze the testimony of each witness. I want to say that the court has no feeling that anybody has deliberately misstated the truth, on either side of the case. I think each side has tried to picture the events as they occurred, and as they remembered them. How long do you want? I feel that the case should move, as I stated before, to a rapid conclusion, because there are not only the two boats involved, but many people are involved.

(Short recess.)

[Endorsed]: Filed Jun. 26, 1942. [1158]

[Endorsed]: No. 10190. United States Circuit Court of Appeals for the Ninth Circuit. Sterling Carr, as Trustee in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a Corporation, Bankrupt, and Fidelity and Deposit Company of Maryland, a Corporation, Appellants, vs. Hermosa Amusement Corporation, Ltd., a Corporation, and J. M. Andersen, Appellees. (And Fourteen Consolidated Appeals). Apostles on Appeals. Upon Appeals from the Dis-

trict Court of the United States for the Southern District of California, Central Division.

Filed July 13, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10190

HERMOSA AMUSEMENT CORPORATION,
LTD., a California corporation,

Libelant,

vs.

The Motor Vessel "SAKITO MARU", her engines,
tackle, apparel, furniture, etc. and the master
and owner thereof, and N. Y. K. Lines, NIP-
PON YUSEN KAISHA STEAMSHIP CO.,
a corporation,

Respondents.

NIPPON YUSEN KABUSHIKA KAISYA, a
corporation,

Claimant.

AND CONSOLIDATED CASES.

STIPULATION DESIGNATING PARTS OF
RECORD TO BE PRINTED AND CONSOL-
IDATING APPEALS.

Whereas, Nippon Yusen Kashubiki Kaisya, a cor-
poration, and Fidelity and Deposit Company of

Item No.	Document	Pages of Certified Record
11.	Answer to cross-libel (omitting attached interrogatories propounded to cross-libelant)	97
12.	Notice of motion for continuance of trial and affidavit of James L. Adams in support thereof	109
13.	Answer of third party respondents to intervening libels	117
14.	Amendment to amended petition to bring in third party respondents (omitting order authorizing filing of same).....	128
15.	Minute order of court of September 3, 1941, denying motion for continuance of trial	139
16.	Written opinion of court dated October 31, 1941	142
17.	Stipulation as to reasonableness of stipulated decrees filed December 16, 1941.....	166
18.	Final decree entered March 17, 1942.....	180

(Cause B)

19.	Amended libel in intervention.....	186
20.	Answer to amended libel in intervention (omitting interrogatories).....	196
21.	Final decree entered December 19, 1941..	217
22.	Satisfaction of final decree.....	221

(Cause J)

23.	Amended libel	460
24.	Answer to amended libel.....	473

Item No.

Document

25. Petition to bring in third party ,
respondents 490
26. Answer of Hermosa Amusement Corpo-
ration, Ltd. to amended libel and petition.. 503
27. Final decree entered December 19, 1941... 509
28. Satisfaction of final decree..... 515

(All Causes)

29. All testimony and proceedings Original
at the trial, omitting all tes-
timony in reporter's transcript
beyond page 868 thereof.
30. All exhibits offered at the trial Originals
and received in evidence, in-
cluding the depositions of T.
Yokota, G. Kato, S. Shimada,
Spencer F. Hewins, David H.
Bartlett and Philip J. Moyna-
han, with attached exhibits
(except as otherwise provided
in Paragraphs F and G of this
stipulation).
31. All testimony, stipulations Original
and rulings of the court at
hearing of motion for continu-
ance on September 8, 1941.

(Cause A)

32. Motion of receiver in bankruptcy to in-
tervene (omitting stipulation regarding
hearing of motion) 678

Item No.	Document	
33.	Order granting leave to intervene by receiver in bankruptcy	680
34.	Petition for appeal	682
35.	Assignment of errors.....	684
36.	Order allowing appeal.....	691
37.	Bond for costs on appeal.....	693
38.	Citation and acknowledgment of service thereof	2

(Cause C)

39.	Petition for appeal.....	717
40.	Assignment of errors.....	719
41.	Order allowing appeal.....	725
42.	Bond for costs on appeal.....	727
43.	Citation and acknowledgment of service thereof	4

(Cause B)

44.	Motion of receiver in bankruptcy to intervene	710
45.	Minute order denying motion of receiver..	712

(Cause A)

46.	Stipulation waiving damage questions on appeal and withdrawing assignments with reference thereto	915
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(All Causes)

47.	Stipulation and order designating parts of record to be certified and contained in record on appeal	917
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Item No.

Document

48. Stipulation designating parts of record to be printed and consolidating appeals. (This stipulation.)

49. Statement of points on which appellants intend to rely on the appeal.

F. That the following described exhibits shall not be printed:

Exhibit No.

Description

Sakito J	Roll of graph recordings made by course recorder of "Sakito Maru".
Sakito O	Tabulations of vessels entering and leaving port on southern route between May 10 and September 4, 1940 (19 pages).

G. That in making up the printed record the Clerk of the Circuit Court of Appeals shall include only those portions of the following described exhibits (consisting of Coast and Geodetic Survey Charts) which show the scene of the collision, the entrance way to Los Angeles Harbor and any and all pencil or ink markings, writings or diagrams thereon and that all other portions of said exhibits need not be printed:

Exhibit No.	Description
Olympic 16	Chart No. 5143
Olympic 18	Chart No. 5101
Sakito K (Yokota 1)	Chart No. 5101
Lt. Hewins No. 1	Chart No. 5101
Moynahan No. 1	Chart No. 5143
Sakito N	Chart No. 5143
Sakito P	Chart No. 5101
Sakito Q	Chart No. 5143

H. That the amended libel in intervention and answer to amended libel in intervention (Item Nos. 19 and 20) in Cause B are typical of like pleadings filed in the other intervening causes set forth below; that the issues with respect to liability raised by such pleadings in Cause B are substantially the same as the issues of liability raised in like manner in the other intervening causes set forth below; that the final decree (Item No. 21) in Cause B, and particularly the rulings contained therein as to liability and as to the dismissal of the petition to bring in third party respondents, are substantially the same as the final decrees and similar provisions included therein entered in the causes set forth below; and that the final decrees in certain of the causes set forth below, as indicated, have been satisfied in a manner similar to that shown by the satisfaction of final decree (Item No. 22) in Cause B:

Symbol	No. of Cause	Description and Title	Nature of Claim and Amount of Decree
C	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, George W. Berger, Libelant in Intervention.	Loss of radio equipment— \$11,409.59*
D	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, Norma Rubin, Lena Karsh, Florence, Lillian and Shirley Rose Karsh, etc., Libelants in Intervention.	Loss of life— \$5,500.00* Personal injuries and loss of personal effects— \$535.00* Loss of personal property and personal effects— \$1,305.42*
E	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, Albertine K. Johnson, etc., Libelants in Intervention.	Loss of life— \$4,500.00*
F	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, John Gilbert Montgomery, etc., Libelants in Intervention.	Personal injuries—\$625.00

*Final decree paid and satisfied.

Symbol	No. of Cause	Description and Title	Nature of Claim and Amount of Decree
G	1138-BH	Hermosa Amusement Corporation, a California corporation, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents, S. T. Elliott, Libelant in Intervention.	Personal injuries—\$300.00

I. That the amended libel (Item No. 23), answer to amended libel (Item No. 24), petition to bring in third party respondents (Item No. 25) and answer of Hermosa Amusement Corporation, Ltd. to amended libel and petition (Item No. 26) in Cause J are typical of like pleadings filed in the other independent causes set forth below; that the issues with respect to liability raised by such pleadings in Cause J are substantially the same as the issues of liability raised in like manner in the other independent causes set forth below; that the final decree (Item No. 27) in Cause J, and particularly the rulings contained therein as to liability and as to the dismissal of the petition to bring in third party respondents, are substantially the same as the final decree in similar provisions included therein entered in the causes set forth below; and that the final decrees in certain of the causes set forth below, as indicated, have been satisfied in a manner similar to that shown by the satisfaction of final decree (Item No. 28) in Cause J:

Symbol	No. of Cause	Description and Title	Nature of Claim and Amount of Decree
H	1146-Y	Roger S. Culp, etc., Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Loss of life—\$4,050.00*
I	1147-BH	Wilma Greenwood, etc., Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Loss of life—\$7,500.00*
K	1149-RJ	L. R. Ohiser, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Personal injuries and loss of personal effects—\$385.00*
L	1154-B	J. Eldon Anderson, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Personal injuries—\$300.00
M	1155-BH	Lucy Sylvester, etc., Libelants, vs. the Japanese Motor Vessel "Sakito Maru", etc., Respondents.	Loss of life—\$5,000.00*
N	1296-BH	Wilfred Rasmussen, Libelant, vs. the Motor Vessel "Sakito Maru", etc., Respondents.	Personal injuries and loss of personal effects—\$1,000.00

J. That the petition for appeal (Item No. 39), assignment of errors (Item No. 40), order allowing appeal (Item No. 41), bond for costs on appeal (Item No. 42), citation and acknowledgment of service thereof (Item No. 43) filed in Cause C are typical of and substantially the same as similar documents and pleadings (included in the certified record but not the printed record) filed in all the other causes excepting Cause A.

K. That the motion of receiver in bankruptcy

*Final decree paid and satisfied.

to intervene (Item No. 32) and order granting leave to intervene by receiver in bankruptcy (Item No. 33) in Cause A are typical of and substantially the same as similar pleadings and orders (included in the certified record but not in the printed record) filed and entered in Causes C and D (as to appeal from final decree entered on March 23, 1942).

L. That the motion of receiver in bankruptcy to intervene (Item No. 44) and the minute order denying such motion (Item No. 45) in Cause B are typical of and substantially the same as similar pleadings and orders (included in the certified record but not in the printed record) filed and entered in Causes D (as to appeal from final decree entered on December 19, 1941), E, F, G, H, I, J, K, L, M and N.

M. That all pleadings and documents and all exhibits which are wholly or partially omitted from the printed record, in accordance with the foregoing provisions of this stipulation, but which have been transmitted to the Circuit Court of Appeals and included in the certified record may be considered a part of the record on appeal and may be referred to, if and when the need arises, to the same extent and with the same effect as if included in the printed record.

N. That in making up the printed record the Clerk of the Circuit Court of Appeals shall omit all formal captions and titles, except the caption upon the libels or amended libels (as the case may be) that are included in the printed record, substi-

tuting therefor the words "Title of Court and Cause"; that all verifications may be omitted, substituting therefor the word "Verified"; that in printing depositions only the names of the witnesses, the name of the party calling said witness, the place where and the date when the deposition was taken and the names of the commissioner or notary need be shown and that all notices attached to the depositions, and the captions and certificates of the depositions shall be omitted and that all papers and documents not herein expressly and specifically directed to be printed shall be omitted from the printed record.

Dated: July 15th, 1942.

ALFRED T. CLUFF,
HUGH B. ROTCHFORD,
GEO. H. MOORE,
CLUFF & BULLARD.

Proctors for Appellees.

LILLICK, GEARY, McHOSE &
ADAMS,

IRA S. LILLICK.

JAMES L. ADAMS.

Proctors for Appellants.

It is so ordered this 17th day of July, 1942.

FRANCIS A. GARRECHT.

Judge of the Circuit Court of
Appeals for the Ninth Cir-
cuit.

[Endorsed]: Filed Jul. 17, 1942.

[Title of Circuit Court of Appeals and Causes.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL.

Come now Nippon Yusen Kabushiki Kaisya, a corporation, and Fidelity and Deposit Company of Maryland, a corporation, appellants herein in all the appeals in the foregoing causes, and Sterling Carr, receiver in bankruptcy for said Nippon Yusen Kabushiki Kaisya, appellant herein in the appeals in certain of the foregoing causes and make the following statement in conformity with Subdivision 6 of Rule 19 of the Rules of this Court:

These fifteen appeals are from separate decrees of the United States District Court for the Southern District of California entered in the foregoing causes, all of which arose out of the collision between the Motorship "Sakito Maru" and the Fishing Barge "Olympic II" about three miles south of the entrance way to Los Angeles Harbor on September 4, 1940. The decrees were made pursuant to a holding by the District Court that the "Sakito Maru" was solely at fault for the collision.

All of the foregoing causes were consolidated for trial and, by a stipulation of the proctors for the appellants and the appellees and an order of the District Court, the record on appeal with respect to the fifteen appeals was also consolidated. By a further stipulation of such proctors, which concurrently with the filing of this statement will be submitted to this Court for approval, the printed record with respect to the fifteen appeals likewise

will be consolidated and it is agreed that all of such appeals may be heard, considered and determined together.

The appeals call for a trial *de novo* and the appellants contend that the District Court erred in the respects set forth in the Assignment of Errors filed in such proceedings. The Assignments of Errors in said fifteen appeals are the same in so far as the question of liability for the collision is concerned except that there are a few additional assignments contained in the Assignment of Errors filed in the main cause which was entitled in the District Court "*Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. the Motor Vessel 'Sakito Maru', etc., No. 1138-BH*". By stipulation of proctors for the appellants and appellees, Assignment Nos. I and XXVIII contained in the Assignment of Errors in the cause just mentioned have been withdrawn.

The aforementioned Assignments of Errors in the fifteen appeals were prepared with consideration to the avoidance of duplication and to the elimination of assignments which will not be relied upon, and the appellants therefore hereby formally adopt the Assignments of Errors in the fifteen appeals, subject to the circumstances set forth in the preceding paragraph, as their statement of points on which they intend to rely on the appeal.

Without waiving any of the errors specifically assigned in the aforementioned Assignments of Errors, the appellants further state for the information of this Court that the general points involved in these appeals are that the District Court erred

in finding that the Motor Vessel "Sakito Maru" was solely at fault for the collision and in not finding that the "Olympic II" was at fault for the collision.

A stipulation has been entered into by proctors for the appellants and appellees designating the parts of the record necessary for the consideration of the points involved in these appeals.

LILLICK, GEARY, McHOSE &
ADAMS,

IRA S. LILLICK,

JAMES L. ADAMS,

Proctors for Appellants.

Received copy of the within Statement of Points on which Appellants Intend to Rely this 16th day of July, 1942.

CLUFF & BULLARD,

Proctors for Appellees.

[Endorsed]: Filed Jul. 17, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

At a stated term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the third day of August in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable William Denman, Circuit Judge, Honorable Clifton Mathews, Circuit Judge.

[Title of Causes.]

ORDER GRANTING MOTION TO INTER-
VENE AND TO BE SUBSTITUTED AS
PARTY APPELLANT.

The motion of Sterling Carr, Trustee in Bankruptcy for Nippon Yusen Kabushiki Kaisya, for an order authorizing him as such trustee to intervene in the above entitled action and to be substituted for Nippon Yusen Kabushiki Kaisya, a corporation, and Sterling Carr, Receiver in Bankruptcy for Nippon Yusen Kabushiki Kaisya, came on regularly to be heard this date, Mr. Robert Ransome, appearing and orally presenting motion on behalf of proctors for Sterling Carr, Trustee, etc., and good cause therefor appearing.

It Is Ordered (1) That Sterling Carr, Trustee in Bankruptcy for Nippon Yusen Kabushiki Kaisya, a corporation, be, and he hereby is permitted to intervene in the within appeals;

(2) That Sterling Carr, Trustee in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation, be, and he hereby is substituted in the place and stead of Nippon Yusen Kabushiki Kaisya, a corporation, and Sterling Carr, Receiver in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation.

[Title of Circuit Court of Appeals and Causes.]

STIPULATION FOR USE OF
PHOTOGRAPHIC EXHIBITS ON APPEAL

It Is Hereby Stipulated, between the parties hereto through their respective counsel, that the following photographic exhibits introduced at the trial herein may be used and considered by the United States Circuit Court of Appeals on the appeal herein in their original form without the necessity of preparing or furnishing copies thereof. The photographic exhibits referred to are as follows:

“Olympic” Nos. 1, 2, 3, 5 and 6, being photographs and blueprint of the “Olympic II”.

Yokota’s Exhibits 4-14, inclusive, attached to deposition of Yokota.

Dated: August 5, 1942.

ALFRED T. CLUFF

ALLAN F. BULLARD

H. C. B. ROTCHFORD

GEO. H. MOORE

Proctors for Appellees

LILLICK, GEARY, McHOSE

& ADAMS

IRA S. LILLICK

Proctors for Appellants.

So Ordered:

FRANCIS A. GARRECHT

United States Circuit Judge

[Endorsed]: Filed Aug. 10, 1942.